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1 [The R.M.C. 803 session was called to order at 1258,
2 13 February 2018.]

3 MJ [Col SPATH]: These proceedings are called to order.
4 The same parties, except for Mr. Nashiri, are present who were
5 present yesterday.

6 Mr. Miller, I assume the proceedings are being
7 transmitted.

8 TC [MR. MILLER]: Good afternoon, Your Honor. And Happy
9 Mardi Gras.

10 MJ [Col SPATH]: Thank you.

11 TC [MR. MILLER]: Yes, these proceedings are being
12 transmitted pursuant to the order to the places indicated in
13 that order.

14 MJ [Col SPATH]: All right. And then do we have somebody
15 here to talk about Mr. al Nashiri's absence?

16 TC [MR. MILLER]: We do, Your Honor. Colonel Wells.

17 MATC [COL WELLS]: Sir, good morning. We call the Major
18 from the SJA office.

19 MAJOR, U.S. ARMY, was called as a witness for the prosecution,
20 was reminded of his oath, and testified as follows:

21 **DIRECT EXAMINATION**

22 Questions by the Managing Assistant Trial Counsel [COL WELLS]:

23 Q. Good morning, Major. You previously appeared and you

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1 are under oath still. Please take a seat. I've placed before
2 you a Statement of Understanding, Right to be Present at this
3 Commission Proceedings. Do you see that?

4 A. I do have it.

5 Q. I did not make a note of the appellate exhibit. Do
6 you see it marked in the bottom right-hand corner what
7 appellate exhibit it is?

8 A. It is Appellate Exhibit 375H.

9 Q. 375H. This morning did you have an occasion to meet
10 with the accused?

11 A. I did. I met with Mr. Nashiri this morning when I
12 got back to camp.

13 Q. Did you advise him of his right to attend today's
14 proceedings?

15 A. I advised him that he had a commission. I had
16 advised him earlier this morning, at around 0-6, just to
17 remind him, when I was there for Hadi's movement. And when I
18 went back just after 10:00, I again advised him we had a
19 commission today at 1300 and asked him if he would be
20 attending the commission.

21 Q. And what did he say to you?

22 A. He indicated he didn't want to come, he said he was
23 tired, and said he doesn't like the van.

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1 Q. Okay. And then did you use this form to document his
2 decision?

3 A. I did. I handed him the -- I asked him if he wanted
4 me to read the English version and then have it translated,
5 and he said no. He just -- he followed along with the Arabic
6 version, so I handed him the Arabic version of this document,
7 and then I read verbatim the two pages in English to him and
8 asked him if he had any questions.

9 Q. Okay. This Appellate Exhibit 375H is composed of
10 three pages; is that correct?

11 A. It is.

12 Q. And is each one marked?

13 A. Each one is marked, three seven ----

14 Q. With an appellate exhibit?

15 A. They're all marked 375H, correct, all three pages.

16 Q. Okay. On the second page in the upper portion, is
17 [sic] the accused's signature appear there?

18 A. Yeah. After I asked him if he had any questions and
19 he indicated he didn't have any questions. And there was a
20 linguist with me. He asked me which one he wanted me
21 to sign -- wanted him to sign, whether the Arabic version or
22 the English version. I told him that was up to him, whichever
23 one he wanted to sign. So I handed them both to him and he

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1 signed above "ACCUSED" on the English version, and then he
2 dated it. He asked the linguist what the date was.

3 Q. Okay. And you just relayed to the commission he had
4 additional matters and reasons why he did not attend. There
5 is a provision on this page for notes where he can write or
6 you could note. Did you have a discussion with him about
7 noting those statements on this?

8 A. I just -- I asked him if he had any questions at all
9 about the form. He had already indicated that he was tired
10 and he didn't really like the van. But it's the same one we
11 used yesterday. And then that was -- that was the end of it.
12 He signed it. I signed it, dated it, and then the linguist
13 and I left his cell.

14 Q. You've had experience to meet with him in the past;
15 is that right?

16 A. I have, several times.

17 Q. Okay. And in the past has he ever written additional
18 notes on the ----

19 A. I don't believe Nashiri has ever read -- written any
20 additional notes. He either comes or he's pretty compliant
21 and understands that -- what the waiver is and signs the
22 waiver without any real issues.

23 Q. Okay. Is it your testimony and impression that he

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1 did this voluntarily for no other reason than his own choice?

2 A. I believe it was his choice that he didn't want to
3 come to the commission today, and because he signed the
4 document, had no questions at all, I believe it is a voluntary
5 waiver of his right to be here.

6 MATC [COL WELLS]: Okay. I have no further questions.
7 Let me retrieve that exhibit and pass it to the military
8 judge.

9 MJ [Col SPATH]: Thanks. Here you go.

10 Defense Counsel, do you have any questions?

11 DDC [LT PIETTE]: No, Your Honor, nothing from defense.

12 MJ [Col SPATH]: All right.

13 MATC [COL WELLS]: Sir, nothing further on this topic.

14 MJ [Col SPATH]: Thank you.

15 WIT: Thanks, Judge.

16 [The witness was excused.]

17 MJ [Col SPATH]: As in the past, I find that
18 Mr. al Nashiri's waiver is voluntary and knowing and certainly
19 a choice made by him not to be here.

20 Trial Counsel, any updates on our two civilians?

21 MATC [COL WELLS]: Your Honor, the requirement of the
22 subpoena modification to appear at 1300 was communicated and
23 it was received by their counsel. Additionally, the Chief

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1 Prosecutor made sure that the supervisory chain, at least for
2 Colonel Aaron's position, was informed of the 1300 appearance
3 time. We have that documented both in person, personal
4 delivery, and also by e-mail.

5 I believe that counsel for Ms. Eliades and Spears
6 have communicated with Mr. Potter an indication that they
7 would not comply with the subpoena. The stated reason, they
8 believe, is an abuse of subpoena power, and they would not
9 comply.

10 It's the intent of the prosecution in issuing that
11 subpoena to obtain their testimony as to factual matters
12 related to release for cause. There are still outstanding
13 facts and evidence that the commission needs, and we will
14 continue to pursue that and take further action independently
15 and also in concert with the commission's directives.

16 MJ [Col SPATH]: I mean, it's more than that. I have
17 ruled repeatedly that they're not released and good cause
18 hasn't been shown. So given that they have a law license, one
19 would think they would come, demonstrate good cause. And
20 then, as the bar rules seem to make clear in every
21 jurisdiction involved here, 1.16(d), as we've talked about,
22 even if I tell them too bad, thanks for the good cause, you
23 still have to represent your client, and you are protected

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1 from the concerns of these ethical conflicts that, by the way,
2 I've ruled don't exist.

3 I've got a lot more to discuss about it. I've been
4 working on it. I did get some updates that that was likely
5 going to be the answer, and frankly, I knew it was the answer
6 yesterday. We would all have to be living in a different
7 world if we were to believe that the defense all of a sudden
8 were going to act in a manner inconsistent with their behavior
9 for five months, and so no surprise for anybody, right?

10 My worry is -- we could issue a writ and go through
11 the process we've gone through in the past, because I saw from
12 the e-mail from the attorney that part of the basis was we
13 don't have jurisdiction. I -- we know that's not true;
14 there's a statute. Now, again, there's options, right? If
15 you don't agree with a statute, I have yet to live in a
16 community where you just ignore it. You can go to another
17 court and try to get relief from it. I mean there's options
18 out there. But as for the just blatant assertion, you don't
19 have jurisdiction, well, that's been resolved, at least by the
20 law of this case. Clearly we do.

21 But you know what then the kind of course of events
22 is. We get them, we have them testify, whether they do or
23 not, and there are adverse consequences to them flowing from

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1 representation of their client. And it causes problems with
2 the representation of their client that then probably lead to
3 good cause and conflict.

4 As adverse things happen when people are arrested
5 typically, or apprehended, or transported to testify, adverse
6 things happen to your security clearance, adverse things
7 should happen to your employment. Those aren't helpful if
8 we're trying to maintain a relationship.

9 But, on the other hand, if the intent is never to
10 help and never to come back, well, then, the answer is that
11 that's not one of the concerns, right? It's doing the right
12 thing for the commission. So we'll talk through it.

13 MATC [COL WELLS]: Sir?

14 MJ [Col SPATH]: More soon. We've got witnesses, we're
15 going to deal with those, and then we'll have some more
16 conversation about this today.

17 MATC [COL WELLS]: Yes, sir. And just to depart on this,
18 we will continue to pursue the supervisory chain. At one time
19 you had the inclination to request Mr. Koffsky ----

20 MJ [Col SPATH]: More than inclination, that I want to
21 hear from him. He, too, doesn't want to just show up. We
22 want to go through this process of send me your questions.
23 Well, we don't really want to send you questions; that's not

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1 how it works. There are lots of reasons I shouldn't have to
2 do this. Well, okay.

3 This behavior by the civilians makes his testimony
4 even more relevant than it was before, when I already thought
5 it was relevant. And if there's intransigence there, who's
6 next? And who's going to show up? Or are we just down here
7 truly on an island with nobody willing to come speak to this,
8 deal with it, and assist?

9 So you can tell right now I'm a little frustrated.
10 And so, because judges are human, I'm going to take a deep
11 breath, listen to the testimony that we had planned for today,
12 ponder kind of what the options are as we move forward, and
13 have some discussions about that. There will not be any
14 rulings from the bench on this issue today, because I want to
15 reflect, and reflect in the right state of mind. I find that
16 helpful all the time.

17 So why don't we get to those witnesses and we'll move
18 forward. Trial Counsel.

19 TC [MR. MILLER]: Thank you, Your Honor. The government
20 calls Jeff Miller.

21 MJ [Col SPATH]: And while we await Mr. Miller --
22 Mr. Miller, let me ask you a question. Yesterday, maybe I
23 misunderstood you or -- were you saying we weren't going to be

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1 finished by the end of Friday, or you were saying we're
2 probably not going to need Friday for witnesses?

3 TC [MR. MILLER]: Probably not going to need Friday.

4 MJ [Col SPATH]: Okay. That helps just with some options
5 on Friday with some of these other issues that are kind of
6 swirling around us. I misunderstood you or we weren't clear,
7 but got it.

8 TC [MR. MILLER]: Sir, if you would step forward to the
9 jury box, remain standing. Would you raise your right hand,
10 sir, please.

11 JEFFREY R. MILLER, civilian, was called as a witness for the
12 prosecution, was sworn, and testified as follows:

13 DIRECT EXAMINATION

14 Questions by the Trial Counsel [MR. MILLER]:

15 Q. Please be seated and, if you would, please, state
16 your name for the record.

17 A. Jeffrey R. Miller.

18 Q. And I believe you have testified at least two times
19 here before the commission; is that correct?

20 A. Yes, sir.

21 Q. And you are a special agent with the Federal Bureau
22 of Investigation?

23 A. I am.

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1 Q. Sir, I think you previously testified that you
2 traveled to Yemen to assist in the evidence collection; is
3 that correct?

4 A. Yes, sir.

5 Q. Were you involved with the search of the ship or the
6 collection of evidence on the USS COLE?

7 A. I was.

8 Q. At some point did you conduct other searches?

9 A. Yes, sir.

10 Q. And if you could, please, indicate how it was that
11 you came to leave the search of the ship and move on to the --
12 what I'll call the land searches.

13 A. There's a -- the team of evidence response was the
14 size of around eight, and we understood there was two other
15 sites that we had to search. So we got pulled, and I got
16 placed with Joe McNamara, Garrett McKenzie, Tracy Kneisler to
17 search the particular sites that they identified.

18 Q. By way of just reintroducing you to the court, prior
19 to being an FBI agent, you had been a police officer somewhere
20 else?

21 A. Yes, sir, City of Pittsburgh.

22 Q. And you had conducted numerous searches, I take it,
23 in your capacity as a police officer?

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1 A. Yes, sir.

2 Q. Do you recall the first place you went to to conduct
3 a land -- what I call a land search?

4 A. Yes, sir.

5 Q. Where was that, sir?

6 A. It was the YM1, the boathouse.

7 Q. All right. If you could -- would you recognize a
8 photograph of it?

9 A. Yes, sir.

10 TC [MR. MILLER]: All right. Your Honor, permission to
11 use the ELMO and the monitors, please?

12 MJ [Col SPATH]: You may. Thanks.

13 TC [MR. MILLER]: I think actually we're going to use the
14 monitor first. If you could, please, pull up Prosecution
15 Exhibit 724.

16 A. I recognize that as the first place that I was tasked
17 with the ERT team to search.

18 Q. Fair and accurate depiction as it appeared that day?

19 A. Yes, sir.

20 TC [MR. MILLER]: We would move for the admission of 724,
21 Your Honor.

22 MJ [Col SPATH]: Noted. Thank you.

23 Q. The search of this particular place, if you could

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1 relate to the court how it was that you came to be there.

2 A. We were briefed that we'd be conducting a search that
3 day. And we were led out there where we secured the site and
4 met with our Yemeni colleagues who turned the site over to us.

5 Q. I believe this search occurred on October 17th of
6 2000; is that correct?

7 A. That's correct.

8 Q. When you say you met with the Yemeni colleagues,
9 could you relate to the court what it was that occurred?

10 A. We met with them. They were at the site. They
11 secured the site. All doors that we observed were closed.
12 They indicated that ----

13 Q. Let me stop you there.

14 A. Yes.

15 Q. You said "they." Are these police officers, law
16 enforcement officials, or are they just civilians?

17 A. Police officers.

18 Q. All right. Thank you.

19 A. The one captain who I spoke with, through an
20 interpreter, indicated that they had previously searched the
21 site and seized several items, of which prior to us getting
22 there they had turned over and replaced those items inside
23 this location.

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1 Q. Did he indicate to you whether or not they had
2 replaced them in the same places they had found them?

3 A. Yes, he did.

4 Q. All right. And what did he tell you?

5 A. He told me that, through an interpreter, as best as
6 they could place them back according to their pictures, they
7 placed them at exactly where they found them.

8 Q. Did they show you any pictures?

9 A. They did.

10 Q. And could you describe, please, what it was they
11 showed you and in what format?

12 A. They were basic pictures taken, hard copy, of the
13 site inside, which I came to know that day as the boathouse.

14 Q. Do you know what happened with those photographs,
15 those pictures?

16 A. I do not.

17 Q. All right.

18 A. I think -- I believe they maintained them.

19 Q. They did not surrender them, in any event, to the FBI
20 that day, did they?

21 A. They did not.

22 Q. And how many people were with you that day? I'm
23 talking about FBI search personnel.

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1 A. Approximately five.

2 Q. And did you establish some sort of protocol or
3 process by which you would conduct this search, sir?

4 A. Our team leader, identified as Special Agent Joe
5 McNamara, he gave us what the protocol of the day would be,
6 which we adhere to at every site. And before conducting the
7 search, we were -- we got our gloves, our protective gear, and
8 he established a site outside the location where we would
9 return evidence throughout the day ----

10 Q. And when you ----

11 A. ---- to him.

12 Q. To him? And is that -- was that a standard
13 procedure?

14 A. Yes, it was.

15 Q. If you had been -- again, if you had been home in
16 October of 2000 searching a murder scene or a drug house,
17 would you have conducted a similar procedure?

18 A. Yes, I would.

19 Q. Did the Yemenis remain in the area while you
20 conducted the search?

21 A. Yes, they were part of the, I guess, overall
22 security. It was pretty intense out there, you know, in the
23 community once the word spread that we were there, so they

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1 maintained the security posture with our Hostage Rescue Team
2 personnel.

3 Q. Did you feel that you were under any time constraints
4 under which you needed to conduct the search?

5 A. I knew that we only had one shot at this and it was
6 that day. And throughout the day I interacted with the
7 special agent in charge, the commander, John O'Neill, who
8 would -- as I passed him, would ask me routinely how much
9 time. He was on the phone with headquarters, and they were
10 always wanting an update. But I did feel as though our time
11 was that day, as quickly as we could accomplish the mission.

12 Q. As to the replacement of the objects, the items
13 that -- the evidentiary items that were returned to the site
14 by the Yemenis, do you know if -- whether or not anybody in
15 the FBI contacted headquarters or any United States Attorney's
16 Offices regarding that particular procedure?

17 A. I believe it was John O'Neill, the Southern District.
18 He made contact with them and they indicated to him that our
19 search was to proceed.

20 Q. And when you refer to the Southern District, you mean
21 the United States Attorney's Office for the Southern District
22 of New York; is that correct?

23 A. I do, sir.

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1 Q. Have you had occasion to observe a sketch or what I
2 call a schematic of the search site?

3 A. I did.

4 TC [MR. MILLER]: Would you please put that up?

5 Q. I placed before you what is referred to as
6 Prosecution Exhibit 1030. Do you recognize that, sir?

7 A. I do, sir.

8 Q. All right. And what is that, sir?

9 A. That is the location that we -- known as the
10 boathouse in Madinat Al-Shaab which we conducted a search on.

11 Q. That's the search this particular day ----

12 A. That's correct. It's an approximate ----

13 Q. I'm sorry.

14 A. Done.

15 Q. You've had occasion to look at it before today; is
16 that correct?

17 A. I did.

18 Q. Does that fairly and accurately portray the
19 relationships between the various rooms, the various items in
20 that particular schematic?

21 A. It does.

22 Q. You have two items -- two markings in there called
23 Room A and room, I think it is, G. Are those actual rooms?

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1 A. No, they're open, open-air areas that -- that were
2 pretty large.

3 Q. All right. If we can, I would ask you if you could
4 step down, please, and come to ----

5 TC [MR. MILLER]: Your Honor, with the court's permission,
6 the witness come down to the diagram.

7 And we are going to move for the admission of 1030,
8 too, Your Honor -- also, excuse me, 1030.

9 Q. Sir, I'm going to show you a series of photographs,
10 and I'd ask you if you would mark on the -- if you would mark
11 on the schematic, the sketching itself, where the
12 photograph -- what the photograph represents.

13 A. Yes, sir.

14 Q. If you could, please, Prosecution Exhibit 337 for
15 Identification, do you recognize that, sir?

16 Oh, I'm sorry, it didn't come up yet. Sorry.

17 A. I do.

18 Q. All right. What do you recognize that to be?

19 A. The search location overall on the -- the western
20 side.

21 Q. All right. If you'd just mark 337 on the thing
22 please?

23 A. [Did as directed.]

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1 Q. There are various people, it looks like, in that
2 photograph; is that correct?

3 A. Yes.

4 Q. Could you relate to the court who those persons are,
5 just generally?

6 A. Generally it would be John O'Neill, special agent in
7 charge; Joe McNamara; and several other HRT personnel.

8 TC [MR. MILLER]: Show Prosecution Exhibit 338. If I may,
9 Your Honor, I think like at the end, like we did yesterday,
10 we'll just move for the admission of all of them at the
11 end ----

12 MJ [Col SPATH]: That works.

13 TC [MR. MILLER]: ---- if that works for the court.

14 Q. Prosecution Exhibit 338 for Identification, do you
15 recognize that, sir?

16 A. I do, sir.

17 Q. What do you recognize that to be?

18 A. That's the location directly outside the search
19 location. The personnel that I -- I recognize myself with the
20 vest, the tan vest; and John O'Neill has the light-green shirt
21 next to me.

22 Q. I also notice several other individuals around the
23 perimeter and an individual standing on the wall. Let's start

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1 first with the person standing on the wall. Who is that?

2 A. That's a Yemeni security patrol.

3 Q. And then in the background, the back part of the
4 photograph, there are several persons milling around. Who are
5 those persons?

6 A. They were a combination of our Yemeni security force
7 and colleagues, investigative personnel.

8 Q. Prosecution Exhibit 342, please. Again, if you
9 could, that -- first put 338 -- 338, mark that.

10 A. **[Did as directed.]**

11 Q. That's Prosecution 342 now on the monitor. Do you
12 recognize that photograph, sir?

13 A. 342?

14 Q. Yes.

15 A. I do.

16 Q. All right. What do you recognize that to be?

17 A. That's the southern end, the corner half of the
18 search location.

19 Q. And there's a blue door in that photograph, also; is
20 that correct?

21 A. That's correct.

22 Q. Could you indicate on the diagram for His Honor where
23 the blue door is?

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1 A. You said it was 338, sir?

2 Q. 342.

3 A. 342, I'm sorry. 342, right here, sir.

4 Q. All right. Thank you.

5 Prosecution Exhibit 351, please. Do you recognize
6 Prosecution 351?

7 A. I do.

8 Q. And what is identified in Prosecution Exhibit 351 for
9 Identification?

10 A. That's the entrance location of the boathouse with
11 the right side door opened up, looking in.

12 Q. And approximately how wide were the doors, if you can
13 recall?

14 A. It may be eight feet.

15 Q. All right. Fair and accurate depiction of the doors?

16 A. It is.

17 Q. Were they locked when you got there?

18 A. They were not.

19 Q. All right. If you would mark, please, on the
20 photograph, 351.

21 A. [Did as directed.]

22 Q. Prosecution 343, please, for Identification. Again,
23 do you recognize that photograph?

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1 A. I do.

2 Q. And do you recognize the individuals in it?

3 A. Yes.

4 Q. Who are those individuals?

5 A. That's myself right at the door, and I'm not quite
6 sure who that person is behind me.

7 Q. All right.

8 A. Along with some Yemeni guards.

9 Q. All right. Fair and accurate depiction?

10 A. It is.

11 Q. All right. If you would, please, mark 343 on the
12 schematic.

13 A. **[Did as directed.]**

14 Q. Moving ahead to Prosecution Exhibit 344 for
15 Identification. Do you recognize that photograph, sir?

16 A. Yes.

17 Q. All right. And what is shown in that photograph?

18 A. It's the search location. It's the northwest side
19 looking back south, with the main entrance that we -- we took
20 off to the right.

21 Q. That would be the blue doors? Was that the main
22 entrance, when you say "main entrance"?

23 A. Yes.

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1 Q. Now, there are two other doors in that photograph; is
2 that correct?

3 A. That's correct.

4 Q. All right. And could you identify those, please, on
5 the schematic?

6 A. The first door, the -- I guess it would be the red
7 door, lighter than the other one, is the entrance to Room A.

8 Q. Okay. That's 344, if you could ----

9 A. 344. And the darker, the far one just out of sight,
10 is the location of Room G.

11 Q. All right. Again, if you could mark it on there.

12 A. **[Did as directed.]**

13 Q. Just a general question, sir. Were you able to see
14 inside this compound from the outside of it?

15 A. No.

16 Q. It was completely enclosed?

17 A. It was.

18 Q. Prosecution Exhibit 345, please. Do you recognize
19 that, sir?

20 A. Yes.

21 Q. And what is that?

22 A. And that's the -- the location of the outside door
23 from Room A.

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1 Q. All right. If you would, please, mark that on
2 the ----

3 A. I'm sorry. Again, the number?

4 Q. That is 345, sir.

5 A. 345.

6 Q. Prosecution Exhibit 731 for Identification, please.
7 Recognize that photograph, sir?

8 A. I do.

9 Q. What's depicted in it?

10 A. It's the second door outside of Room G.

11 Q. And in that particular photograph, again, is there
12 any Yemeni law enforcement personnel?

13 A. Yes.

14 Q. All right. And just quickly for the record, describe
15 what he's wearing, although it's rather obvious.

16 A. Military camouflage outfit and a beret.

17 Q. If you would mark that, please, on the chart 731.

18 A. **[Did as directed.]**

19 Q. Prosecution Exhibit 346 for Identification, please.
20 Again, is that a closer picture of the door?

21 A. It is, sir.

22 Q. All right. Fair and accurate depiction as it
23 appeared?

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1 A. Yes.

2 Q. That is 346. Was that wide enough to drive a car
3 through?

4 A. It was.

5 Q. All right. Prosecution Exhibit 347 for
6 Identification. Do you recognize that, sir?

7 A. Yes, sir.

8 Q. All right. And what is that?

9 A. That's the same door located outside of Room G.

10 Q. All right. If you could, please, mark it.

11 A. Number again? I'm sorry.

12 Q. It is Prosecution 347.

13 A. **[Did as directed.]**

14 Q. Again, just to be repetitive, is Room G an actual
15 room?

16 A. No, it's an open area.

17 Q. Again, looking at that particular door, was -- did it
18 appear wide enough to drive a car or vehicle through?

19 A. It did.

20 Q. Prosecution 730, please, for Identification. Again,
21 a photograph, sir?

22 A. A photograph of the entrance door to Room A.

23 Q. All right. Mark it on the ----

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1 A. [Did as directed.]

2 Q. There appear to be persons again on the side of that
3 photograph. Who are those individuals?

4 A. They're our Yemeni colleagues.

5 Q. All right. 731, please, for Identification. We can
6 move on. I think we've already gone through that one.

7 348. Again, if you could, please, what does that
8 represent? You're going to have to do it for the record, I'm
9 sorry.

10 A. That's okay. That's the back end of the boathouse
11 looking south to north.

12 Q. Mark it on the chart, please.

13 A. I'm sorry. Again, the number?

14 Q. That is 348, sir.

15 A. [Did as directed.]

16 Q. Prosecution Exhibit 349 for Identification, do you
17 recognize that, sir?

18 A. Yes. A closer look at the southern wall, the rear
19 wall of the boathouse.

20 Q. All right. Would you mark that on the chart, please.

21 A. [Did as directed.]

22 Q. And to give some height perspective, could you see
23 over the wall if you were just standing there?

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1 A. No, could not.

2 Q. Prosecution Exhibit 350 for Identification, please.

3 A. That's looking on the southern rear wall from west to
4 east.

5 Q. All right. Did the height remain the consistent --
6 consistent for the entire wall?

7 A. Yes, sir.

8 Q. If you would mark that, please, 350.

9 A. **[Did as directed.]**

10 Q. Prosecution 721, please. Again, do you recognize
11 that, sir?

12 A. I do.

13 Q. And is that the same south wall?

14 A. It is.

15 Q. And there are some individuals in it. If you could,
16 please, tell us what they're doing.

17 A. There were -- it looks like they were conducting
18 measurements of the rear wall.

19 Q. All right.

20 A. Two agents.

21 Q. Mark that on the chart, please, 721.

22 A. **[Did as directed.]**

23 Q. Prosecution Exhibit 352 for Identification, please.

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1 Do you recognize that, sir?

2 A. I do.

3 Q. What do you recognize that to be?

4 A. That's inside the entrance that we utilized, looking
5 out.

6 Q. All right. Is that the blue door that you've
7 previously indicated?

8 A. Yes.

9 Q. All right. If you would, please, mark that 352.

10 A. **[Did as directed.]**

11 Q. Prosecution Exhibit 353 for Identification, please.
12 Recognize that, sir?

13 A. I do.

14 Q. What is that?

15 A. That's a wheelbarrow with cement inside, located
16 directly inside that location, that door.

17 Q. All right. Mark it on the chart, please.

18 A. **[Did as directed.]**

19 Q. Was there cinderblocks and building material within
20 the four walls of the compound?

21 A. There was.

22 Q. All right. Did it appear that it was continuing --
23 that work was continuing?

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1 A. Ongoing project, yes.

2 Q. Prosecution Exhibit 3 -- 723 for Identification,
3 please. Do you recognize that, sir?

4 A. I do.

5 Q. All right. If you could, please, for the court,
6 describe where that is, that wall, in relation to what.

7 A. That was looking inside from direct -- directly
8 inside the entrance that we utilized in Room A, looking
9 towards E, D, and F partitions.

10 Q. All right. If you would sort of point for the court.
11 So you walked in the front door, correct?

12 A. Yes.

13 Q. And what direction were you looking? Okay.

14 A. That's looking straight through.

15 Q. If you would mark that on the chart, please. That's
16 723.

17 A. **[Did as directed.]**

18 Q. Prosecution 358, please. Do you recognize that, sir?

19 A. I do.

20 Q. What is that?

21 A. That's the same door. It was a passageway, entrance
22 to a passageway from Room A through to Room G.

23 Q. So you have it indicated on the chart as what?

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1 A. Room D.

2 Q. So that was not an actual room; it was a passageway?

3 A. It was a passageway, yes, sir.

4 Q. And it allowed you entrance to what?

5 A. In between -- this is -- this is one -- one complete
6 structure from the north end to the south end, and you had to
7 utilize that door to get from Room A to Room G.

8 Q. Thank you. If you would mark that -- that's 758, on
9 the chart, please? Excuse me, what did I say? It's 358 --
10 358, sir. I'm sorry.

11 A. [Did as directed.]

12 Q. Prosecution 354 for Identification, please. Do you
13 recognize that, sir?

14 A. Yes, sir.

15 Q. What's depicted in Prosecution 354?

16 A. It's a small structure, enclosed structure, directly
17 inside the search location.

18 Q. All right. Could you point it out for the court,
19 please?

20 A. Yes. It was -- we indicate -- we identified the
21 rooms as Room B and Room C, and there is entranceways along
22 with an open window.

23 Q. All right. Would you please mark that on the chart?

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1 That's Prosecution 354.

2 A. [Did as directed.]

3 Q. Prosecution 355, please, for Identification. Do you
4 recognize that, sir?

5 A. I do.

6 Q. What is that?

7 A. That was a rope of some kind, a strap, if you will,
8 hanging from 2x4s that were protruding from Room B, the
9 outside of Room B.

10 Q. All right. If you could, just go back to Prosecution
11 Exhibit 354. Do you see those straps in the photograph?

12 A. I do. I do, sir.

13 Q. Would you point them out, please, or just describe
14 where they are?

15 A. The door is almost touching them, and there is one,
16 two, three, four, five, six, seven 2x4s sticking out. And
17 it's on the fourth 2x4 over from the left.

18 Q. Prosecution Exhibit 356 for Identification, please.
19 Do you recognize what's in that photograph, sir?

20 A. I do.

21 Q. And what does it depict?

22 A. It's the southern wall of Room A from inside the
23 location.

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1 Q. Prosecution -- and if you could put that, please,
2 mark it 356.

3 A. [Did as directed.]

4 Q. Prosecution Exhibit 746 for Identification. 46?
5 746. 746, excuse me. Do you recognize that item, sir?

6 A. Yes.

7 Q. What is that?

8 A. Some type of mortar, brick cutter.

9 Q. Do you recall where it was found?

10 A. Located at the southern back wall of Room A.

11 Q. All right. And could you mark that 746, please.

12 A. [Did as directed.]

13 Q. If you would, go back to Prosecution Exhibit 355.

14 Again, could you mark 355 where that was found on the graph or
15 the chart?

16 A. [Did as directed.]

17 Q. Now you indicated that there was two rooms that you
18 nominated as B and C, correct?

19 A. Yes, sir.

20 Q. Did you have occasion to search Room C?

21 A. I did.

22 Q. I show you a photograph, Prosecution Exhibit 366. Do
23 you recognize that, sir?

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- 1 A. I do.
- 2 Q. What is that?
- 3 A. That's the outside looking in from Room A into
4 Room C.
- 5 Q. All right. Mark that on the chart, please.
- 6 A. Number again, sir?
- 7 Q. I'm sorry, it is 366 for Identification. 366.
- 8 A. **[Did as directed.]**
- 9 Q. How big a room was it, about, if you can recall?
- 10 A. Probably 14 by 12.
- 11 Q. All right.
- 12 A. Approximate.
- 13 Q. Prosecution Exhibit 370, please, for Identification.
14 Do you recognize that, sir?
- 15 A. I do.
- 16 Q. What do you recognize that to be?
- 17 A. It's from inside Room C looking out to right outside
18 of Room F.
- 19 Q. All right. That's in Room C, all right. If you
20 could mark that, please, 370.
- 21 A. **[Did as directed.]**
- 22 Q. Again, it appears to be two items hanging on the
23 wall; is that correct?

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1 A. Yes.

2 Q. What are those items, sir?

3 A. Clothing items, a work jumpsuit and a -- some
4 headgear.

5 Q. Was that items that -- were those -- did they belong
6 to any of the FBI search team?

7 A. They did not.

8 Q. All right. Were they there when you all arrived?

9 A. They were, sir.

10 Q. Prosecution Exhibit 368 for Identification, please.
11 Do you recognize this photograph, sir?

12 A. Yes.

13 Q. What is that? What's depicted in that photograph?

14 A. It's inside Room C, of course the small ladder, an
15 active water supply, and a miscellaneous bucket and some other
16 items.

17 Q. I see what appear to be some items taped on the wall.
18 Did -- were those placed on the wall by your search team?

19 A. Yes, sir.

20 Q. All right. Is that a standard procedure?

21 A. It is.

22 Q. And why do you do that?

23 A. To identify the exact room we're in as C.

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1 Q. Could you mark on the chart, please, Prosecution
2 Exhibit 368?

3 A. [Did as directed.]

4 Q. Prosecution Exhibit 730 -- 741 for Identification,
5 please. Do you recognize that, sir?

6 A. Yes.

7 Q. And if you could, please, relate what is depicted in
8 that photograph.

9 A. It's looking inside from the front leading edge of
10 the step into Room C. And with the door open, I see all the
11 items that I mentioned previously, to include the ladder, the
12 bucket, and several other items.

13 Q. In the left, what I will call the left bottom corner,
14 there appears to be what I would term a Turkish -- we used to
15 call it Turkish toilets; is that correct?

16 A. Yes, sir.

17 Q. Was that an actual toilet of some sort, if you
18 recall?

19 A. It could have been used as a toilet or a drop site
20 for liquids. I -- I would identify it as a portal.

21 Q. All right. If you would, please, mark on the chart
22 Prosecution Exhibit 741.

23 A. [Did as directed.]

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1 Q. Prosecution Exhibit 367 for Identification, do you
2 recognize that, sir?

3 A. I do.

4 Q. What is depicted in Prosecution Exhibit 367?

5 A. There's various containers that I observed close to
6 the water supply.

7 Q. If you would -- that was in Room C?

8 A. Room C.

9 Q. If you would mark that on the chart, please, 367.

10 A. **[Did as directed.]**

11 Q. Lastly, Prosecution Exhibit 369 for Identification.
12 Again, sir, if you could identify what is contained in -- or
13 what's depicted in that photograph?

14 A. It's a blue jump -- work jumpsuit hanging to the left
15 of a head cover.

16 Q. There's a -- something taped to the wall there?

17 A. That's indicating we're in Room C.

18 Q. Thank you. Did you have occasion to go into Room B?

19 A. I did.

20 Q. Prosecution Exhibit 362 for Identification, please.
21 Do you recognize what's contained in that photograph, sir?

22 A. Yes. That's the -- standing in Room A looking into
23 Room B.

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1 Q. If you would mark on the chart, please, 362.

2 A. What's the last number, sir?

3 Q. 362, I'm sorry.

4 A. That's okay.

5 Q. Prosecution Exhibit 365 for Identification, do you
6 recognize what's contained in that photograph, sir?

7 A. I do.

8 Q. And could you describe what it shows?

9 A. It's looking from Room B outside through to the
10 passageway that I identified previously as Room D.

11 Q. Would you mark it, please? 365.

12 A. **[Did as directed.]**

13 Q. Prosecution Exhibit 364, do you recognize that, sir?

14 A. Yes. It's inside marked, our markings of Room B.

15 Q. When you say "our markings," meaning the ----

16 A. The Evidence Response Team.

17 Q. If you could, please, 364, mark it on the chart.

18 A. **[Did as directed.]**

19 Q. And Prosecution Exhibit 363 for Identification, do
20 you recognize that photograph, sir?

21 A. I do.

22 Q. What is that photograph?

23 A. Various items that were on the floor of Room B.

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1 Q. All right. Were those items later seized by another
2 agent?

3 A. They were.

4 Q. All right. If you could, please, mark on the chart
5 Prosecution Exhibit 363.

6 A. **[Did as directed.]**

7 Q. I take it, then, you searched the rest of the -- or
8 you're familiar with the rest of the area; is that correct?

9 A. Yes, sir.

10 Q. If you could, Prosecution Exhibit 360 for
11 Identification. Do you recognize those items, sir?

12 A. Yes.

13 Q. All right. And what -- where were they located?

14 A. They were in Room A, and they were on bricks that
15 were located directly outside Room F.

16 Q. And those items, were they seized?

17 A. They were.

18 Q. All right. Could you mark it on the chart, please,
19 Prosecution Exhibit 360.

20 A. **[Did as directed.]**

21 Q. Prosecution Exhibit 359 for Identification, please.
22 Do you recognize that, sir?

23 A. Yes, sir.

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1 Q. And if you could, please, describe what is contained
2 or depicted in that photograph.

3 A. That was the package. There was -- it was a rivet
4 tool.

5 Q. A rivet what?

6 A. That was not inside the package. It was just the
7 empty package.

8 Q. All right. Would you please mark -- where did you
9 find it?

10 A. I found it on the southern wall, right against the --
11 right against the southern wall.

12 Q. If you could, please, then mark 359 where you
13 approximately found the item.

14 A. **[Did as directed.]**

15 Q. Prosecution Exhibit 357, please. Do you recognize
16 what's depicted in that photograph, sir?

17 A. Yes, sir.

18 Q. All right. And what is depicted in that photograph?

19 A. Utilized older can of an unknown substance with paint
20 brushes.

21 Q. Would you mark on the chart where you found that, or
22 where that was located?

23 A. 357?

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1 Q. 357, sir.

2 A. It is right up against Room F in Room A.

3 Q. Prosecution Exhibit 361 for Identification, please.

4 Do you recognize that photograph, sir?

5 A. I do.

6 Q. And what's contained in that photograph?

7 A. It's the Room A, looking at the front northern
8 entranceway, as I identified in Exhibits 344 and 345.

9 Q. That would be the backside of the door, the interior
10 part of it?

11 A. It's the interior, yes, sir.

12 Q. If you would, please, mark on the chart where that
13 photograph -- what that photograph represents.

14 A. I'm sorry. Again, the number?

15 Q. It is 361, sir.

16 A. **[Did as directed.]**

17 Q. Prosecution 371 for Identification, please. Do you
18 recognize that, sir?

19 A. I do.

20 Q. All right. And what is depicted in that particular
21 photograph?

22 A. It is the passageway, Room D.

23 Q. Was the door open when you got there, if you can

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1 recall? If you remember.

2 A. I can't recall.

3 Q. Could you mark, please, on the chart 371.

4 A. **[Did as directed.]**

5 Q. Prosecution Exhibit 378, please, for Identification.

6 Do you recognize that, sir?

7 A. I do.

8 Q. And what do you recognize that to be?

9 A. That is the -- inside Room D, looking out to Room G.

10 Q. I see various -- various pieces of what I call trash
11 or items on the ground in Room G; is that correct?

12 A. That's correct.

13 Q. Were some of those items seized?

14 A. They were.

15 Q. There also appears to be a piece of wood on the left
16 side of the photograph. What was that?

17 A. I do not recall.

18 Q. All right. If you could, please, mark -- we're
19 looking at 378.

20 A. **[Did as directed.]**

21 Q. Prosecution Exhibit 739, please. Do you recognize
22 that?

23 A. I do.

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1 Q. All right. What is that?

2 A. That's the door closed inside Room D, looking towards
3 Room G.

4 Q. Where would that door be?

5 A. Right here, sir [pointed].

6 Q. All right. Could you mark it, please.

7 A. [Did as directed.]

8 Q. Going back to Prosecution Exhibit 378, please. Does
9 that help refresh your recollection as to what that piece of
10 wood is?

11 A. It does.

12 Q. All right. And what is that?

13 A. It's part of the door.

14 Q. All right. Prosecution Exhibit 382, please. Do you
15 recognize that, sir?

16 A. Yes.

17 Q. And what does that depict?

18 A. That's depicting the -- directly inside Room G
19 looking east.

20 Q. Would you mark, please, where it depicts on the
21 chart?

22 A. What number did you say, sir?

23 Q. That was 382, sir.

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1 A. 382.

2 Q. Prosecution Exhibit 379 for Identification, please.

3 Do you recognize what's depicted in that photograph, sir?

4 A. Yes, sir.

5 Q. All right. And what is depicted in that photograph?

6 A. That's inside Room G, looking towards Room D.

7 Q. All right. Is that the wooden door or the metal
8 door? What would you be looking at there?

9 A. The wood door.

10 Q. All right. If you would, please, mark it 379.

11 A. **[Did as directed.]**

12 Q. How deep a step was it off the ledge onto the ground?

13 A. Approximately three foot.

14 Q. All right. And again, there's items. Do you see
15 there are items on the ground there?

16 A. I do.

17 Q. Were any of those seized?

18 A. They were.

19 Q. You marked 379 on the chart?

20 A. I did, sir.

21 Q. All right. Prosecution Exhibit 381, please. Do you
22 recognize that, sir?

23 A. I do.

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1 Q. All right. And what is depicted in that photograph?

2 A. You're inside Room G, looking at the entranceway that
3 I had previously identified as the door, 344.

4 Q. All right. If you would mark it, please.

5 A. Again, sorry?

6 Q. 381, sir.

7 A. 381.

8 Q. Prosecution Exhibit 380, sir, please. Again, do you
9 recognize what's contained in that photograph?

10 A. I do.

11 Q. What's contained in that photograph?

12 A. Looking at the -- inside Room G, looking at the
13 entranceway on the north side as well as the passageway
14 identified as Room D.

15 Q. All right. Mark it, please.

16 A. **[Did as directed.]**

17 Q. Prosecution Exhibit 383, please, for Identification.
18 Do you recognize that, sir?

19 A. I do.

20 Q. What do you recognize that to be?

21 A. That's the rear wall, the southern wall of Room G.

22 Q. All right. And there appears to be a piece of paper
23 or something on the wall; is that correct?

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- 1 A. Yes.
- 2 Q. And what was that?
- 3 A. That was our piece indicating it was Room G.
- 4 Q. All right. If you would, please, mark 383 on the
5 chart.
- 6 A. **[Did as directed.]**
- 7 Q. Prosecution Exhibit 384, please.
- 8 A. It's looking at the same southern wall with the --
9 with Room E, the middle structure, in sight in Room A.
- 10 Q. All right. If you would, please, mark it.
- 11 A. 384.
- 12 Q. Prosecution Exhibit 341, please, for Identification.
13 Do you recognize that, sir?
- 14 A. I do.
- 15 Q. All right. And what is depicted in Prosecution
16 Exhibit 341?
- 17 A. Empty paint can located inside Room G on the ground.
- 18 Q. Would you mark it, please, on the chart.
- 19 A. 340?
- 20 Q. 341, sir.
- 21 A. 341.
- 22 Q. Prosecution Exhibit 339 for Identification, sir.
- 23 A. Same ----

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1 Q. Yeah, let me ask you. What's depicted in that
2 photograph, 339?

3 A. An empty can in 349 located inside Room G.

4 Q. All right. Again, would you mark that on the chart,
5 please.

6 A. **[Did as directed.]**

7 Q. Prosecution Exhibit 340 for Identification, please.
8 Do you recognize what's in that photograph, sir?

9 A. Yes, sir.

10 Q. All right.

11 A. Same can, empty can of contact cement, located inside
12 Room G.

13 Q. Would you mark it, please, on the photograph -- on
14 the chart, 340.

15 A. **[Did as directed.]**

16 Q. Prosecution Exhibit 385 for Identification, please.
17 Do you recognize all this, these various pieces of paper ----

18 A. I do.

19 Q. ---- items? I'll just call it sort of trash.

20 And what is depicted in that photograph or where it
21 was found?

22 A. There was a little brush, it was inside Room G; a
23 little greenery, if you will. And it was compiled right

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1 beside it.

2 Q. Would you mark it on the chart, please, Prosecution
3 Exhibit 348 -- 385, excuse me. 385.

4 A. **[Did as directed.]**

5 Q. Prosecution Exhibit 7 -- 376 for Identification,
6 please. Do you recognize what's depicted in that photograph,
7 sir?

8 A. I do.

9 Q. What is depicted in that photograph?

10 A. It's the location to Room D.

11 Q. All right. The -- could you show the court where
12 you're talking about, which door we're talking about?

13 A. Right here, sir **[pointed]**.

14 Q. All right. Would you mark it, please.

15 A. **[Did as directed.]**

16 Q. Prosecution Exhibit 744, please, for Identification.
17 Do you recognize that photograph, sir?

18 A. Yes, sir.

19 Q. And what's depicted in 744?

20 A. The same door into Room F, inside -- right outside
21 Room D. And it was a -- it was locked.

22 Q. If you could, please, mark on the chart 377 -- excuse
23 me, 744. I'm sorry, 744. I'm getting ahead of myself.

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1 A. [Did as directed.]

2 Q. Prosecution Exhibit 377 for Identification, please.

3 Do you recognize what's depicted in Prosecution Exhibit 377
4 for Identification?

5 A. Yes.

6 Q. And what is depicted in that photograph, sir?

7 A. Spray paint can or tool.

8 Q. And where did you find that?

9 A. Outside Room F.

10 Q. Mark on the chart, please, where you found 377.

11 A. [Did as directed.]

12 Q. Prosecution Exhibit 734 for Identification, please.

13 Do you recognize what's contained in that photograph, sir?

14 A. Yes.

15 Q. All right. Now, which room is that?

16 A. Room F.

17 Q. If you could, mark it, please.

18 A. [Did as directed.]

19 Q. I'm going to ask you, if you would, to look out the
20 window of that photograph. What do you see?

21 A. I see the -- the door, the doorway, the entranceway
22 to Room G.

23 Q. All right.

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1 A. Okay.

2 Q. Go ahead and mark it, please.

3 A. What number is that?

4 Q. That is 734.

5 A. **[Did as directed.]**

6 Q. Prosecution Exhibit 735. Do you recognize what's --
7 do you recognize that, sir?

8 A. I do.

9 Q. What do you recognize that to be?

10 A. Inside Room F, looking at the front door to Room G.

11 Q. All right. If you would go ahead and mark that,
12 please.

13 A. **[Did as directed.]**

14 Q. Prosecution Exhibit 749, sir. Do you recognize that?

15 A. I do.

16 Q. What is that?

17 A. It was a power board inside Room F.

18 Q. All right. Mark it, please.

19 A. **[Did as directed.]**

20 Q. Prosecution Exhibit 375, please. Do you recognize
21 that photograph, sir?

22 A. I do.

23 Q. What do you recognize that to be?

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1 A. Inside Room F, looking out to Room D.

2 TC [MR. MILLER]: Hold on, if we could. Could we blow
3 that up a little bit, that picture? Do we have that ability?
4 Right there, right there.

5 Q. What's reflected in that photograph?

6 A. I was mistaken. It's marked as Room E.

7 Q. All right. And where is Room E?

8 A. Room E is located toward the northern entrance.

9 TC [MR. MILLER]: All right. And bring it back to normal
10 size. All right.

11 Q. And if you could, Prosecution Exhibit 375, if you
12 would mark it on the chart, please.

13 A. **[Did as directed.]**

14 Q. Prosecution Exhibit 372, sir. Do you recognize that?

15 A. I do.

16 Q. And what do you recognize that to be?

17 A. Inside location E, Room E.

18 Q. All right. If you would, please, mark it.

19 A. **[Did as directed.]**

20 Q. I take it it shows that same electrical source; is
21 that correct?

22 A. Correct.

23 Q. All right. Prosecution Exhibit 373, sir, do you

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1 recognize that?

2 A. Inside the same room, Room E.

3 Q. All right. If you could mark it, please.

4 A. [Did as directed.]

5 Q. And lastly, Prosecution Exhibit 374. What are those
6 items, sir?

7 A. They were various bottles inside of Room E.

8 Q. If you'd mark it on the chart, please.

9 A. Number again, sir?

10 Q. That is 374, sir.

11 A. 374.

12 TC [MR. MILLER]: For the record, Your Honor, at this time
13 the government would move for the admission of the following
14 photographs.

15 Q. Before I do that, are those photographs accurate
16 depictions of what is contained in their four corners?

17 A. Yes.

18 Q. Are any of them distorting in any way?

19 A. No.

20 Q. Do they fairly and accurately depict what you saw
21 when you were conducting the search on October 17th of 2000 in
22 Aden?

23 A. They do.

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1 TC [MR. MILLER]: Your Honor, at this time the government
2 would move for the admission of the following photographs:
3 Prosecution Exhibit 337, 338, 342, 351, 343, 344, 345, 371,
4 346, 347, 730, 348, 349, 350, 721, 352, 353, 723, 358, 354,
5 355, 356, 746, and 731.

6 Prosecution Exhibit -- photographs 366, 370, 368,
7 741, 367, 369, 362, 365, 364, 363, 360, 359, 357, 361, 371,
8 378, 739, 382, 379, 381, 380, 383, 384, 341, 339, 340, 385,
9 376, 744, 377, 334, 335 -- 734, excuse me -- 734, 735, 749,
10 375, 372, 373, and 374, Your Honor.

11 MJ [Col SPATH]: All right. Noted. Thank you.

12 TC [MR. MILLER]: Permission to use the ELM0?

13 MJ [Col SPATH]: Just give me a second. Mr. Miller the --

14 TC [MR. MILLER]: I think I'm going to try to clean that
15 up right now.

16 MJ [Col SPATH]: The blowup, you're going to mark that as
17 what?

18 TC [MR. MILLER]: I think what we're going to do, Your
19 Honor, is I have -- we're going to use the ELM0. I'm going to
20 ask permission to use the ELM0, introduce, move for the
21 introduction of 1030, which will be the small portion of the
22 chart, and then I will ask probably during a break to mark
23 that as 1030A, the blowup.

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1 MJ [Col SPATH]: That makes sense.

2 TC [MR. MILLER]: Fair?

3 MJ [Col SPATH]: Yeah, fair. Proceed.

4 TC [MR. MILLER]: Using the ELM0, Your Honor, if I could
5 have permission, sir?

6 MJ [Col SPATH]: You may.

7 Q. I'm showing you, Agent Miller, what has been marked
8 as Prosecution Exhibit 1030 for Identification. Do you
9 recognize that chart?

10 A. I do.

11 Q. And is that the chart which -- is that a smaller
12 version of the chart which you have been -- you have been
13 using during your testimony?

14 A. Yes.

15 Q. Does it fairly and accurately show the relationship
16 between the various rooms?

17 A. It does.

18 Q. And again, you had occasion to review it prior to
19 coming into court today?

20 A. I did.

21 TC [MR. MILLER]: All right. Your Honor, the government
22 would move for the admission of 1030 for Identification --
23 1030 into evidence.

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1 MJ [Col SPATH]: And then that, the bigger one, is going
2 to be 1030A?

3 TC [MR. MILLER]: It is. I was going to ask the agent.

4 Q. The chart that you've been using in court, is that an
5 exact duplicate, just a blowup of 1030?

6 A. It is.

7 Q. All right. You also had occasion, did you not to --
8 and we'll refer to that as 1030A. Did you have occasion to
9 seize various pieces of evidence while at the scene?

10 A. I did.

11 MJ [Col SPATH]: All right. Before we shift, it's been a
12 little over an hour. Perfect time. Let's take ten minutes,
13 and we'll keep going. Let's take ten. Thank you. We're in
14 recess.

15 [The R.M.C. 803 session recessed at 1406, 13 February 2018.]

16 [The R.M.C. 803 session was called to order at 1421,
17 13 February 2018.]

18 MJ [Col SPATH]: The commissions are called back to order.
19 All the parties are present who were present last time. The
20 witness is here as well. Just remember you're still under
21 oath.

22 Mr. Miller.

23 TC [MR. MILLER]: Thank you very much, Your Honor.

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1 Appreciate it.

2 **DIRECT EXAMINATION CONTINUED**

3 **Questions by the Trial Counsel [MR. MILLER]:**

4 Q. Agent Miller, over the break did you have a chance to
5 speak with me about some of -- a couple of the photographs you
6 have identified?

7 A. Yes, sir.

8 Q. And I think you indicated that you may have
9 incorrectly identified the placement of a couple of those
10 photographs; is that correct?

11 A. I did.

12 Q. I would like to first start with Prosecution
13 Exhibit 730 for Identification.

14 TC [MR. MILLER]: Permission to use the monitor, sir.

15 MJ [Col SPATH]: You may.

16 Q. I think this is one that you failed to mark on the
17 chart; is that correct?

18 A. Yes, sir.

19 Q. All right. If you could, please, mark it on the
20 chart.

21 A. **[Did as directed.]**

22 Q. 730 -- Prosecution Exhibit 730 for Identification is
23 what?

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1 A. It's the entranceway to Room A on the front location,
2 north side.

3 Q. Prosecution Exhibit 734, please. I think you
4 previously indicated that 734 was Room F; is that correct,
5 sir?

6 A. I did.

7 Q. All right. Is it, in fact, Room F?

8 A. No, sir. It's Room E.

9 Q. All right. If you could, please, mark that on the
10 chart.

11 A. **[Did as directed.]**

12 Q. If you marked it on Room F, if you would, just cross
13 it out.

14 A. **[Did as directed.]**

15 Q. Prosecution Exhibit 735, sir. Do you recognize that?

16 A. I do.

17 Q. And you previously testified that that occurred in --
18 or that was found in Room F?

19 A. That's correct.

20 Q. Was it, in fact, Room F?

21 A. No, sir. It was Room E.

22 Q. And how can you tell that it is, in fact, Room E?

23 A. Looking at the -- right outside of Room E is the

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1 entranceway to the outside gate of Room A.

2 Q. Great. If you could, please, mark that on the chart.

3 A. 735?

4 Q. Yes.

5 A. **[Did as directed.]**

6 Q. Prosecution Exhibit 748, please. Again, that would
7 be Room E? Was that marked on the chart?

8 A. No.

9 Q. 748, please, if you would mark it.

10 A. **[Did as directed.]**

11 Q. And lastly, Prosecution Exhibit 749.

12 A. It's the electric panel located inside Room E.

13 Q. All right. If you would mark that, please, in Room
14 E.

15 A. 740?

16 Q. 749.

17 A. **[Did as directed.]**

18 Q. You previously indicated it was in Room F?

19 A. I did.

20 Q. All right. If you would please cross it out and
21 initial it.

22 A. **[Did as directed.]**

23 Q. You may return to the seat, please. Thank you.

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1 I think you indicated that you did have occasion to
2 seize various pieces of evidence; is that correct?

3 A. That's correct.

4 TC [MR. MILLER]: If you would, please, provide the
5 witness with Prosecution Exhibit 365 for Identification --
6 265. Excuse me, 265.

7 And I would ask permission, Your Honor, to use the
8 ELMO.

9 MJ [Col SPATH]: Yes.

10 TC [MR. MILLER]: Thank you, sir.

11 Q. You were provided with Prosecution Exhibit 265, sir.
12 Do you recognize that?

13 A. I do, sir.

14 Q. What do you recognize it to be?

15 A. It's red and black carpet fiber.

16 Q. And did you recover that?

17 A. I did.

18 Q. And where did -- from where did you recover it?

19 A. Room A, on the ground.

20 Q. And when you're referring to Room A, you're referring
21 to Room A in the chart, correct?

22 A. I am.

23 Q. I'm placing on the ELMO Prosecution Exhibit 265A for

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1 Identification. Do you recognize that photograph, sir?

2 A. I do.

3 Q. Let me zero in on it a little bit. What do you
4 recognize it to be?

5 A. Red and black carpet fiber, which is the same that's
6 located in this evidence bag.

7 Q. 265?

8 A. That's correct.

9 Q. There is a K number in the photograph; is that
10 correct?

11 A. Yes, sir.

12 Q. Could you identify the K number for the court,
13 please.

14 A. 14.

15 Q. Looking now at Prosecution Exhibit 265, does it have
16 a K number? If we need to open the bag, we can. Does the bag
17 need to be opened for you, sir?

18 A. [Nodded head.]

19 TC [MR. MILLER]: I think the witness has nodded yes. If
20 we could, please, open the bag. Thank you.

21 A. Sir, I identify the K number as 14 ----

22 Q. Correct.

23 A. ---- inside, yes.

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1 Q. Prosecution Exhibit 265 has a K number of what? The
2 photograph.

3 A. I'm sorry. 14.

4 Q. All right. Is there a K number contained on the bag
5 itself, Prosecution Exhibit 265?

6 A. There is.

7 Q. And what is that number?

8 A. 14.

9 Q. So the numbers match?

10 A. They do.

11 Q. On the Prosecution Exhibit 265, is there a 1B number?

12 A. Yes, sir, 1B29.

13 Q. Is there a YM number on it?

14 A. YM-109.

15 Q. Is there a chain of custody form attached to the
16 exhibit, Prosecution Exhibit 265?

17 A. There is.

18 Q. If you would look at that, please. Do you see it?
19 Do you recognize it?

20 A. Yes, sir.

21 Q. Are you able to associate that particular chain of
22 custody form with the exhibit, Prosecution 265?

23 A. I am.

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1 Q. And how are you able to do that, sir?

2 A. Located -- the person that I submitted it to was
3 Joseph McNamara.

4 Q. Are there any identifying numbers on it, on the chain
5 of custody form?

6 A. The K14.

7 Q. Looking at the chain of custody, is there a YM number
8 on it?

9 A. Yes.

10 Q. All right. And what is that YM number?

11 A. 109.

12 Q. Is that the same number contained on the exhibit,
13 Prosecution 265?

14 A. It is.

15 Q. It reflects who -- who does it reflect collected the
16 evidence?

17 A. Myself.

18 Q. All right. I'm talking about the chain of custody
19 form itself.

20 A. Joseph McNamara received it.

21 Q. And why would Joseph McNamara receive it as opposed
22 to yourself?

23 A. He was the one that was collecting all the evidence

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1 outside the location.

2 Q. Now, on the evidence bag itself, 265, do you see any
3 of your handwriting on it?

4 A. I do.

5 Q. All right. And does it indicate who recovered it?

6 A. Myself.

7 Q. I'm going to show you Prosecution Exhibit 265D, and
8 ask you if you recognize that form, sir.

9 A. Yes.

10 Q. Is that an exact duplicate of the form about which
11 the green sheet -- about which you have just testified?

12 A. It is.

13 Q. All right. I'm placing on the ELM0 Prosecution
14 Exhibit 265B. Do you recognize that, sir?

15 A. I do.

16 Q. And what is contained in the photograph, Prosecution
17 265B?

18 A. It's my name, along with the chain of custody form.

19 Q. And it indicates that you seized it or recovered it?

20 A. I recovered it, yes, sir.

21 Q. Placing on the ELM0 Prosecution Exhibit 265C. Do you
22 recognize that photograph, sir?

23 A. I do.

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1 Q. And what is contained in that photograph?

2 A. It indicates it's trace evidence, and it was
3 photographed, and it's one piece of carpet.

4 Q. All right. As to the evidence bag itself, do you
5 recognize that evidence bag?

6 A. I do.

7 Q. All right. And what evidence bag is it?

8 A. K14.

9 Q. All right. If you're looking at -- if you look at
10 Prosecution Exhibit 265, please, the bag itself.

11 A. Yes.

12 Q. All right. Is 265C a fair and accurate depiction of
13 part of that bag?

14 A. Yes.

15 Q. Now, it indicates on it that there's a description of
16 the evidence; is that correct?

17 A. It does.

18 Q. And did you write that?

19 A. I did.

20 Q. And what does it indicate that you found?

21 A. One piece of carpet.

22 Q. Is 265C a fair and accurate depiction of the evidence
23 bag?

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1 A. It is.

2 Q. Is 265B a fair and accurate depiction of the bottom
3 half of the evidence bag?

4 A. It is.

5 TC [MR. MILLER]: Your Honor, the government would move at
6 this time for the admission of Prosecution Exhibit 265A, B, C,
7 and D.

8 MJ [Col SPATH]: Noted. Thank you.

9 TC [MR. MILLER]: If you would please provide the witness
10 with Prosecution Exhibit 267.

11 Q. I would ask, sir, if you would please take a look at
12 Prosecution 267 for Identification. Do you recognize
13 Prosecution Exhibit 267?

14 A. I do.

15 Q. And what do you recognize it to be?

16 A. Two paintbrushes with an unknown substance.

17 Q. And did you seize those items?

18 A. I did.

19 Q. Or collect them?

20 A. Yes.

21 Q. And how do you know that you collected them?

22 A. It has my name on the chain of custody form.

23 Q. And is that in your own handwriting?

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1 A. It is.

2 Q. And how did you describe the item at the time you
3 found it?

4 A. As two paintbrushes located inside Room A on the
5 floor.

6 Q. I'm placing on the ELM0 Prosecution Exhibit 267A for
7 Identification and ask you if you recognize what's contained
8 in that photograph, sir?

9 A. I do.

10 Q. What is contained in that photograph?

11 A. The same brushes that I -- that are located inside
12 this evidence bag.

13 Q. All right. Does the evidence bag -- excuse me. Does
14 the Prosecution Exhibit 267A have a K number on it?

15 A. It does.

16 Q. And what is that number?

17 A. K16, sir.

18 Q. Looking on the bag itself, the evidence, 267, does
19 that have a K number on it?

20 A. It does.

21 Q. And what is that K number?

22 A. K16.

23 Q. Does it match? Does the number on the evidence bag

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1 itself match the K number in Prosecution Exhibit 267A?

2 A. It does.

3 Q. Turning now to the bag itself, 267, do you know --
4 excuse me, do you recognize any of the handwriting on it?

5 A. I do.

6 Q. And whose handwriting is it?

7 A. It is mine.

8 Q. All right. And if you could read into the record,
9 please, the description of the item, the location of the
10 recovery, and by whom it was recovered.

11 A. "Two paintbrushes with an unknown substance, located
12 in Room A, floor," by myself.

13 Q. And is that all in your handwriting?

14 A. It is.

15 Q. Now, is there a chain of custody form attached to
16 that ----

17 A. There is.

18 Q. ---- Exhibit 267?

19 A. Yes, sir.

20 Q. Would you look at that, please?

21 A. Yes.

22 Q. All right. Now, looking at that particular chain of
23 custody form, does it have a YM number on it?

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1 A. It does.

2 Q. And what is that YM number?

3 A. 149.

4 Q. All right. Looking at the bag itself, 267, does it
5 have a YM number on it?

6 A. It does.

7 Q. And what is that number?

8 A. 149.

9 Q. Are you, therefore, able to associate the chain of
10 custody form with the bag itself?

11 A. Yes.

12 Q. Placing on the ELM0 Prosecution Exhibit 267C for
13 Identification. Do you recognize that form, sir?

14 A. I do, sir.

15 Q. And what do you recognize it to be?

16 A. Chain of custody form.

17 Q. Is it an exact duplicate of the chain of custody form
18 that you have just described?

19 A. It is.

20 Q. It indicates that Joseph McNamara was the person who
21 collected it?

22 A. Yes.

23 Q. And again, why was he placed on that chain of custody

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1 form?

2 A. As set up by the protocol, he was the collector.

3 Q. And I think I may have asked you, but this is an
4 exact duplicate of the form that you have been describing,
5 correct?

6 A. Yes, sir.

7 Q. Placing on the ELMO Prosecution Exhibit 267B. Do you
8 recognize that, sir?

9 A. I do.

10 Q. And what do you recognize that to be?

11 A. It is the exact picture of the chain of custody form.

12 Q. All right. Fair and accurate depiction of it?

13 A. Yes.

14 TC [MR. MILLER]: Move for the admission, Your Honor, of
15 Prosecution Exhibit 267A, B, and C.

16 MJ [Col SPATH]: Noted. Thanks.

17 TC [MR. MILLER]: If you could provide the witness,
18 please, with Prosecution Exhibit 271 for Identification.

19 Q. Do you recognize Prosecution Exhibit 271, sir?

20 A. I do, sir.

21 Q. All right. And did you collect the evidence in
22 Prosecution 271?

23 A. Yes.

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1 Q. And what is contained in Prosecution 271?

2 A. A paintbrush.

3 Q. And how do you know that you collected it?

4 A. It has my name on the -- on the actual bag itself.

5 Q. And do you recognize that handwriting?

6 A. I do.

7 Q. And whose handwriting is it?

8 A. Mine.

9 Q. I'm going to place on the ELMO Prosecution
10 Exhibit 271A for Identification. Do you recognize that
11 photograph, sir?

12 A. I do, sir.

13 Q. And what's contained in that photograph?

14 A. A paintbrush.

15 Q. Is that the same brush, paintbrush, contained in
16 Prosecution Exhibit 271?

17 A. It is.

18 Q. There's a K number -- is there a K number on the
19 photograph?

20 A. There is.

21 Q. What is that number?

22 A. K20.

23 Q. Looking on the exhibit, Prosecution 271, does it have

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1 a K number?

2 A. It does.

3 Q. And what is that K number?

4 A. 20.

5 Q. Does the bag, Prosecution Exhibit 271, have a YM
6 number on it?

7 A. I cannot see it. It does, sorry.

8 Q. What is that YM number?

9 A. 162.

10 Q. Looking at the bag itself, 271, you said you
11 recognize the handwriting?

12 A. I do.

13 Q. And it is whose handwriting?

14 A. Mine.

15 Q. All right. Does it indicate where the item was
16 found?

17 A. It does.

18 Q. Is that in your handwriting?

19 A. It is.

20 Q. Could you relate, please, what you noted on that bag.

21 A. Room A, east wall.

22 Q. And does it indicate by whom it was seized?

23 A. Yes, sir.

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1 Q. And is that your handwriting?

2 A. It is.

3 Q. Is there a chain of custody form attached to it?

4 A. Yes.

5 Q. Would you take a look at that, please. Does it have
6 a YM number on it?

7 A. Yes.

8 Q. And what is the YM number?

9 A. 162.

10 Q. All right. YM1-162?

11 A. Yes.

12 Q. Are you able to associate that chain of custody form
13 with the Prosecution Exhibit 271?

14 A. I am.

15 Q. And how are you able to do that?

16 A. It's located on the bag.

17 Q. What's located on the bag?

18 A. The number.

19 Q. The -- which number? Because we talked about a
20 couple numbers.

21 A. YM-62 -- 162.

22 Q. Again, who does it show as collecting the evidence?

23 A. Myself.

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1 Q. All right. On the bag, the evidence bag?

2 A. Yes, sir.

3 Q. The chain of custody form?

4 A. Yes.

5 Q. Who does it indicate collected the evidence?

6 A. Myself.

7 Q. All right. Would you look at that, please, your
8 form. The chain of custody form, the green sheet.

9 A. I'm sorry, yes, sir. Joseph McNamara.

10 Q. I'm placing on the ELMO Prosecution Exhibit 271C for
11 Identification. Take a look at that, sir. Is that an exact
12 duplicate of the chain of custody form about which you've just
13 testified?

14 A. It is.

15 Q. I'm placing on the ELMO Prosecution Exhibit 271B. Do
16 you recognize that photograph?

17 A. I do.

18 Q. And what's contained in that photograph?

19 A. It's the evidence bag with my handwriting.

20 Q. Fair and accurate depiction of the bag?

21 A. It is.

22 TC [MR. MILLER]: Your Honor, the government would move
23 for the admission of Prosecution Exhibit 271A, B, and C.

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1 MJ [Col SPATH]: Noted. Thank you.

2 TC [MR. MILLER]: If we could provide the witness, please,
3 Prosecution Exhibit 272.

4 Q. Have you had a chance to look at 272, sir?

5 A. Yes, sir.

6 Q. All right. Do you recognize Prosecution Exhibit 272
7 for Identification?

8 A. I do.

9 Q. All right. And what do you recognize it to be?

10 A. It is the plastic bag with the rivet gun.

11 Q. The one -- the photograph that you previously
12 identified?

13 A. Yes.

14 Q. Did you seize that item?

15 A. I did.

16 Q. And how do you know that you seized it?

17 A. My handwriting, and it's recovered by myself.

18 Q. When you say your handwriting, your handwriting on
19 what, sir?

20 A. On the chain of custody form.

21 Q. The chain of custody form on the bag or the chain --
22 official chain of custody form?

23 A. On the bag.

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1 Q. I'm placing on the ELM0 Prosecution Exhibit 272. Do
2 you recognize that, sir?

3 A. I do.

4 Q. What do you recognize that to be?

5 A. It is the rivet bag.

6 Q. Is that the same rivet bag contained in Prosecution
7 272?

8 A. It is.

9 Q. Is there a K number located on the photograph,
10 Prosecution Exhibit 272A?

11 A. 26, K26.

12 Q. Is there a K number on the exhibit itself,
13 Prosecution Exhibit 272?

14 A. There is.

15 Q. And what is that?

16 A. K26.

17 Q. Does it match the number, therefore, on Prosecution
18 Exhibit 272A?

19 A. It does.

20 Q. Looking at the bag, Prosecution Exhibit 272, do you
21 see your handwriting?

22 A. I did -- I do.

23 Q. And where is your handwriting?

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- 1 A. On the bag itself.
- 2 Q. On what lines? I'm sorry.
- 3 A. On the "Recovered by" line.
- 4 Q. All right. And does it indicate who recovered it?
- 5 A. It does. Myself.
- 6 Q. All right. Is the location of recovery -- is that
- 7 your handwriting?
- 8 A. It is.
- 9 Q. And where does it show it was recovered?
- 10 A. Room A.
- 11 Q. Is there a date and time of recovery?
- 12 A. Yes.
- 13 Q. Is that your handwriting?
- 14 A. It is.
- 15 Q. When does it show it was recovered?
- 16 A. 10/17/2000, at 10:27 a.m.
- 17 Q. Is there a YM number on Prosecution Exhibit 272?
- 18 A. There is.
- 19 Q. And what is that number?
- 20 A. 272.
- 21 Q. Is there a YM number? I'm sorry.
- 22 A. One second. 272, sir.
- 23 Q. All right. Is there a 1B number?

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1 A. Yes, sir.

2 Q. All right. And what's the 1B number?

3 A. 1B37.

4 Q. Is there a chain of custody form attached to the
5 Exhibit 272?

6 A. There is.

7 Q. Take a look at that, please. Are you able to
8 associate that chain of custody form with the Exhibit 272?

9 A. I am.

10 Q. And how are you able to do that?

11 A. It's Special Agent Joseph McNamara.

12 Q. All right. Does it have a 1B number?

13 A. It does.

14 Q. And what is the 1B number?

15 A. 37.

16 Q. Does it match the -- does the 1B number on
17 Prosecution -- on the green sheet match the 1B number on
18 Prosecution Exhibit 272?

19 A. It does.

20 Q. Now, it indicates that -- who was the actual
21 collector?

22 A. Joseph McNamara.

23 Q. I'm placing on the ELM0 Prosecution Exhibit 272D. Do

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1 you recognize that, sir?

2 A. I do.

3 Q. And is that an exact duplicate of the chain of
4 custody form about which you have been testifying?

5 A. It is.

6 Q. Placing on the ELM0 Prosecution Exhibit 272B, as in
7 boy. Do you recognize that, sir?

8 A. It is -- I do.

9 Q. What do you recognize that to be?

10 A. It is the bag that's located in front of me.

11 Q. All right. It is the bag, the evidence bag for
12 Prosecution Exhibit 272?

13 A. It is.

14 Q. Is that a fair and accurate depiction of it?

15 A. It is.

16 Q. Placing on the ELM0 Prosecution Exhibit 272C for
17 Identification. Do you recognize that, sir?

18 A. I do.

19 Q. And what is that -- what is depicted in that
20 photograph?

21 A. It is the rear of the evidence bag.

22 Q. Of Prosecution Exhibit 272?

23 A. It is.

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1 Q. All right. Is it a fair and accurate depiction of
2 the back of the bag?

3 A. It is, sir.

4 TC [MR. MILLER]: Your Honor, at this time the government
5 would move for the admission of Prosecution Exhibit 272A, B,
6 C, and D.

7 MJ [Col SPATH]: Noted. Thank you.

8 TC [MR. MILLER]: If we could provide the witness, please,
9 with Prosecution Exhibit 273.

10 Q. Do you recognize Prosecution Exhibit 273 for
11 Identification, sir?

12 A. I do.

13 Q. And is it an item that you collected?

14 A. Yes.

15 Q. At YM1?

16 A. Yes, sir.

17 Q. And how do you know you, in fact, collected it?

18 A. My name is on -- located on the collection bag,
19 evidence bag.

20 Q. I show you what has been marked as Prosecution
21 Exhibit 273A and ask you if you recognize that photograph,
22 sir.

23 A. I do.

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1 Q. What do you recognize it to be?

2 A. It's a can of carb and choke cleaner for an engine.

3 Q. And is there a K number on that photograph?

4 A. Yes.

5 Q. And what is the K number?

6 A. K27.

7 Q. Is that the can -- or excuse me. Is that the exhibit
8 that's contained in Prosecution Exhibit 273?

9 A. It is.

10 Q. I'm going to show you Prosecution Exhibit 273B for
11 Identification. Do you recognize that, sir?

12 A. I do.

13 Q. What do you recognize that to be?

14 A. It's the same can located inside this bag.

15 Q. All right. Is it the opposite side of the can?

16 A. It is.

17 Q. And does it have a K number?

18 A. Yes.

19 Q. What is that number?

20 A. K27.

21 Q. Now, if you would, please, look at the exhibit
22 itself, 273, the evidence bag. Is there any of your
23 handwriting contained on that bag?

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1 A. There is.

2 Q. All right. And if you could please read what's
3 contained on it that you wrote on the bag.

4 A. Looking at an east wall, Room A location. My name on
5 10/19/2000, and K27.

6 Q. All right. Is there a YM number on it?

7 A. Yes, YM-101.

8 Q. Is there a 1B number on it?

9 A. 1B38.

10 Q. All right. Is there a chain of custody form attached
11 to it?

12 A. Yes.

13 Q. Would you take a look at that, please. Are you able
14 to associate that chain of custody form with the exhibit,
15 Prosecution Exhibit 273?

16 A. I am.

17 Q. And how are you able to do that?

18 A. Special Agent Joseph McNamara collected it from me,
19 and it indicates it's K27.

20 Q. All right. Does it also -- is there a 1B number on
21 it?

22 A. Yes.

23 Q. I'm talking about the green sheet itself, please.

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1 A. Yes.

2 Q. Is there a 1B number?

3 A. 1B38.

4 Q. Does that match the number on the exhibit itself,
5 273?

6 A. It does.

7 Q. And does it have a YM number?

8 A. 101.

9 Q. All right. Does that match the number on the bag
10 of -- containing the Exhibit 273?

11 A. It does.

12 Q. First off, I want to show you a photograph,
13 Prosecution Exhibit 273D. Do you recognize that exhibit?

14 A. I do.

15 Q. 273D for Identification, do you recognize that?

16 A. I do.

17 Q. Is that an exact duplicate of the chain of custody
18 form you've just described?

19 A. It is.

20 Q. Placing on the ELM0 Prosecution Exhibit 273C for
21 Identification. Do you recognize that, sir?

22 A. It is, sir -- I do, sir.

23 Q. What do you recognize that to be?

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1 A. The exact bag I have in front of me, YM-101, K27,
2 containing the can.

3 Q. All right. Is that Prosecution Exhibit 273?

4 A. It is.

5 Q. All right. Fair and accurate depiction of it?

6 A. Yes.

7 TC [MR. MILLER]: Move for the admission, Your Honor, at
8 this time of Prosecution Exhibit 273A, B, C, and D.

9 MJ [Col SPATH]: Noted. Thank you.

10 TC [MR. MILLER]: If you could, please, pull up photograph
11 PE 360.

12 Q. Sir, if you would, please, take a look at the
13 photograph, Prosecution Exhibit 360 for Identification. Do
14 you recognize that photograph?

15 A. I do, sir.

16 Q. All right. Is that the same can contained in
17 Prosecution Exhibit 273?

18 A. It is.

19 Q. Thank you.

20 TC [MR. MILLER]: If you would, please, provide the
21 witness with Prosecution Exhibit 274 for Identification.

22 Can we switch back to the ELM0? Thank you.

23 Q. Have you had a chance to look at 274?

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- 1 A. Yes, sir.
- 2 Q. Do you recognize that, sir?
- 3 A. I do.
- 4 Q. What do you recognize that to be?
- 5 A. It's a can of carb and choke cleaner for engines.
- 6 Q. Did you seize that?
- 7 A. I did.
- 8 Q. And from where did you seize it?
- 9 A. Room A, right against the outside of Room F wall,
10 Room F.
- 11 Q. Placing on the ELM0 Prosecution Exhibit 274A.
12 Recognize that photograph, sir?
- 13 A. I do.
- 14 Q. What do you recognize it to be?
- 15 A. The can that I have in my hands.
- 16 Q. The can contained in Prosecution Exhibit 274?
- 17 A. Yes, sir.
- 18 Q. Does the photograph, Prosecution Exhibit 274A, have
19 a -- excuse me, a K number?
- 20 A. It does.
- 21 Q. And what is that number, sir?
- 22 A. K28.
- 23 Q. Placing on the ELM0 Prosecution Exhibit K28 -- excuse

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1 me, Prosecution Exhibit 274B. Do you recognize that
2 photograph, sir?

3 A. I do.

4 Q. And what is contained in that photograph?

5 A. That's the same can, the back portion of the can.

6 Q. Does Prosecution Exhibit 274B have a K number?

7 A. It does.

8 Q. What is that number, sir?

9 A. K28.

10 Q. If you would, please, take a look at the exhibit
11 itself, Prosecution 274. My first question is: Does it have
12 a K number on it?

13 A. It does.

14 Q. What is that number?

15 A. 28.

16 Q. Does that match the number contained on Prosecution
17 Exhibit 274A and 274B?

18 A. It does.

19 Q. Also looking at that particular photograph, does it
20 have a 1B number?

21 A. Yes.

22 Q. And what is that 1B number?

23 A. 39.

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1 Q. Does it have a YM number?

2 A. It does.

3 Q. What is the YM number?

4 A. 102.

5 Q. All right. Now, you indicated that you seized or
6 collected that item?

7 A. Yes.

8 Q. And how do you know that you were the one who, in
9 fact, collected it?

10 A. The writing on the outside of the evidence bag is my
11 writing.

12 Q. All right. And could you read into the record what
13 you wrote?

14 A. Room A, 10/17/2000, and I have my name on there.

15 Q. All right. Is there a chain of custody form attached
16 to it?

17 A. There is.

18 Q. All right. Now, I'm talking about the green sheet
19 itself.

20 A. Yes.

21 Q. Looking at the green sheet, does the green sheet --
22 are you able to associate the green sheet with the Exhibit
23 274?

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1 A. I am.

2 Q. And how are you able to do that, sir?

3 A. With the Y number and the name Joseph McNamara.

4 Q. Does the YM number -- do the YM numbers match?

5 A. They do.

6 Q. Do the 1B numbers match?

7 A. They do.

8 Q. I'm placing on the ELM0 Prosecution Exhibit 274D, as
9 in David. Do you recognize -- oops, I'm sorry. Do you
10 recognize that form, sir?

11 A. I do.

12 Q. Is that an exact duplicate of the chain of custody
13 form you have just described?

14 A. Yes, sir.

15 Q. Placing on the ELM0 Prosecution Exhibit 274C for
16 Identification. Do you recognize that, sir?

17 A. I do.

18 Q. What do you recognize it to be?

19 A. It's the evidence bag before me.

20 Q. Is it a fair and accurate depiction of it?

21 A. It is.

22 TC [MR. MILLER]: Your Honor, the government would move
23 for the admission of Prosecution Exhibits 274A, B, C, and D.

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1 MJ [Col SPATH]: Noted. Thank you.

2 TC [MR. MILLER]: If you could, please, again pull up
3 Prosecution Exhibit -- the photograph, Prosecution
4 Exhibit 360.

5 Q. Do you recognize that photograph, Prosecution
6 Exhibit 360, sir?

7 A. I do.

8 Q. And we have just discussed Prosecution Exhibit 274.
9 Do you see it in the photograph?

10 A. I do.

11 Q. All right. And where is it located?

12 A. Inside Room A against Room F, outside wall.

13 Q. And it's right next to the yellow carburetor cleaner
14 can; is that correct?

15 A. Yes, sir.

16 TC [MR. MILLER]: If we could go back to the ELMO, please.

17 Will you provide the witness with Prosecution
18 Exhibit 277 for Identification.

19 Q. Have you had a chance to look at that, sir?

20 A. Yes, sir.

21 Q. And do you recognize it?

22 A. I do.

23 Q. Did you collect it?

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1 A. I did.

2 Q. And how do you know that you collected it?

3 A. My writing is on the evidence bag.

4 Q. And is there a description of it?

5 A. Yes.

6 Q. What is it?

7 A. It's a grinder disc.

8 Q. And is your handwriting as to the date and time of
9 recovery, the location, and by whom it was recovered?

10 A. Yes.

11 Q. All right. Would you read that into the record,
12 please.

13 A. 10/17/2000, Room A, by myself, approximate time,
14 2:00 p.m.

15 Q. When you say by yourself, is your name written on
16 there?

17 A. Yes, sir.

18 Q. Placing on the ELMO Prosecution Exhibit 277A. Do you
19 recognize that, sir?

20 A. I do.

21 Q. What is contained in the photograph, 277A for
22 Identification?

23 A. The same grinder disc that I have in my hand.

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1 Q. Prosecution Exhibit 277?

2 A. Yes.

3 Q. All right. Is there a K number identified on that
4 photograph, 277A?

5 A. Yes, sir.

6 Q. What is that number, sir?

7 A. K34.

8 Q. Is there a K number contained on the exhibit,
9 Prosecution Exhibit 277?

10 A. There is.

11 Q. What is that K number?

12 A. K34.

13 Q. So it matches the K number on the exhibit,
14 Prosecution 277A?

15 A. Yes.

16 Q. If you would, looking at the exhibit itself, is there
17 a green sheet or a chain of custody Form 192 attached to it?

18 A. Yes.

19 Q. Would you take a look at that, sir. Is there a YM
20 number on it?

21 A. YM-110.

22 Q. All right. And is there a 1B number?

23 A. 1B53.

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1 Q. If you would look at the exhibit itself, 277. Is
2 there a YM number on it?

3 A. Yes.

4 Q. What is that YM number?

5 A. 110.

6 Q. Is there a 1B number?

7 A. 1B53.

8 Q. So they match?

9 A. Yes, sir.

10 Q. All right. Does it indicate who collected the item?

11 A. Yes, sir.

12 Q. And who is that?

13 A. Myself.

14 Q. All right. I'm talking about on the chain of
15 custody, the 192.

16 A. I'm sorry. Joseph McNamara.

17 Q. I'm placing on the ELM0 Prosecution Exhibit 277C, and
18 ask you to take a look at that. Do you recognize that, sir?

19 A. I do.

20 Q. And is that an exact duplicate of the chain of
21 custody form you've just described?

22 A. Yes.

23 Q. Placing on the ELM0 Prosecution Exhibit 277B. Take a

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1 look at that, sir. Do you recognize that?

2 A. I do.

3 Q. What's contained in that photograph?

4 A. It's the evidence bag.

5 Q. Fair and accurate depiction of it?

6 A. It is.

7 TC [MR. MILLER]: Move for the admission, Your Honor, of
8 Prosecution Exhibit 277A, B, and C.

9 MJ [Col SPATH]: Noted. Thank you.

10 TC [MR. MILLER]: Provide the witness, please, with
11 Prosecution Exhibit 278.

12 Q. Sir, have you had a chance to look at Prosecution
13 Exhibit 278?

14 A. I did.

15 Q. All right. And do you recognize it?

16 A. I do.

17 Q. And what do you recognize it to be?

18 A. Numerous in Room -- located in Room A, I recovered
19 numerous pieces of debris from fire pit.

20 Q. And how do you know that you recovered it?

21 A. It has my date of recovery and name that I recovered
22 it.

23 Q. And you had a chance, did you not, previously to

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1 review this evidence, correct?

2 A. I did.

3 Q. All right. I'm going to show you a series of
4 photographs. First, Prosecution Exhibit 278A. Do you
5 recognize that, sir?

6 A. I do.

7 Q. And what do you recognize it to be?

8 A. Debris.

9 Q. Is that debris contained in Prosecution Exhibit 278?

10 A. Yes.

11 Q. And if you could, please, does it have a K number?
12 Prosecution Exhibit 278A, does it have a K number?

13 A. K35.

14 Q. All right. Placing on the ELMO Prosecution
15 Exhibit 278B. Do you recognize that, sir?

16 A. I do.

17 Q. And what do you recognize that to be?

18 A. Miscellaneous items that I identified as possible
19 paint brushes.

20 Q. And did you recover it?

21 A. I did.

22 Q. Where?

23 A. From the same fire pit located in Room A.

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1 Q. And are those pieces contained in the exhibit itself,
2 Prosecution 278?

3 A. Yes, sir.

4 Q. Is there a K number on the photograph,
5 Prosecution 278B?

6 A. K35.

7 Q. Placing on the ELM0 Prosecution Exhibit 278C, and ask
8 you if you recognize that, sir?

9 A. I do.

10 Q. What do you recognize that to be?

11 A. Miscellaneous items brought -- parts, brushes.

12 Q. Did you collect that?

13 A. I did.

14 Q. All right. And is -- Prosecution Exhibit 278C is --
15 the items depicted in that photograph, are they contained in
16 the actual exhibit, Prosecution Exhibit 278?

17 A. Yes.

18 Q. Does it have a K number?

19 A. K35.

20 Q. All right. Placing on the ELM0 Prosecution
21 Exhibit 278D, sir. Do you recognize the items in that
22 photograph?

23 A. I did -- I do.

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1 Q. And what are they?

2 A. Some wire particles.

3 Q. Are those articles ones that you collected?

4 A. Yes.

5 Q. Where did you collect them?

6 A. From the Room A fire pit.

7 Q. All right. And are those items contained in the
8 exhibit, Prosecution Exhibit 278D?

9 A. Yes.

10 Q. Is there a K number on the photograph, Prosecution
11 Exhibit 278D?

12 A. Yes, sir.

13 Q. What is that number?

14 A. K35.

15 Q. Placing on the ELM0 Prosecution Exhibit 278E, Edward.
16 Do you recognize what's contained in that photograph?

17 A. Yes, sir.

18 Q. All right. Is that -- did you collect those items?

19 A. I did.

20 Q. And from where did you collect them?

21 A. From Room A in the fire pit.

22 Q. Are those items contained in the exhibit, Prosecution
23 Exhibit 278?

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1 A. They are.

2 Q. All right. Is there a K number contained in the
3 photograph, 278E, Edward?

4 A. K35.

5 Q. Placing on the ELM0 Prosecution Exhibit 278F. Do you
6 recognize that photograph, sir?

7 A. I do.

8 Q. What is contained in that photograph?

9 A. Debris.

10 Q. All right. Did you collect that debris?

11 A. I did.

12 Q. And from where did you collect it?

13 A. Room A in the fire pit.

14 Q. And is that debris contained in the exhibit,
15 Prosecution Exhibit 278?

16 A. Yes, sir, it is.

17 Q. All right. And is there a K number contained on the
18 photograph, Prosecution Exhibit 278F?

19 A. K35.

20 Q. So they all had the number K35, all the photographs
21 I've shown you?

22 A. They did.

23 Q. Now, you indicated that you seized it. How do you

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1 know that you seized it, all these items?

2 A. My name is on -- located on -- and writing is on the
3 recovered bag.

4 Q. Could you read into the record, please, what you put
5 on that bag.

6 A. The date, 10/17/2000. Recovered by Miller, myself.
7 Description, Room A. And location, numerous pieces of debris
8 from the fire pit.

9 Q. And is there an item -- excuse me, is there a YM
10 number contained on that bag?

11 A. There is.

12 Q. What is that YM number?

13 A. 111.

14 Q. Is there a K number on it?

15 A. Yes, sir.

16 Q. What is that K number?

17 A. 35.

18 Q. Does the K number, therefore, 35, match the ones in
19 the photographs?

20 A. Yes, sir.

21 Q. Is there a 1B number on the bag, Prosecution
22 Exhibit 278?

23 A. There is.

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1 Q. And what is that 1B number?

2 A. 55.

3 Q. I'm going to ask you: Is there a chain of custody
4 form, a 192, attached to the exhibit?

5 A. Yes.

6 Q. I'd ask you to take a look at it, please. Are you
7 able to associate that 192, that green sheet, with the
8 evidence bag in 278?

9 A. I am.

10 Q. And how are you able to do that, sir?

11 A. Special Agent Joseph McNamara's name as the
12 collector.

13 Q. Are there any matching numbers?

14 A. K35.

15 Q. All right. And as to the chain of custody form
16 itself, the YM number?

17 A. 111.

18 Q. All right. Does it match the number on the evidence
19 bag, 278?

20 A. It does.

21 Q. And the 1B number on the chain of custody form is, on
22 the 192?

23 A. 55.

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1 Q. And does it match the number that's on the
2 Prosecution Exhibit 278?

3 A. It does.

4 Q. I'm placing on the ELM0 Prosecution Exhibit 278H. Do
5 you recognize that, sir?

6 A. I do.

7 Q. And is that an exact duplicate of the chain of
8 custody form you've just described?

9 A. Yes, sir, it is.

10 Q. Placing on the ELM0 Prosecution Exhibit 278G, as in
11 girl. Do you recognize that, sir?

12 A. I do.

13 Q. What do you recognize that to be?

14 A. It's the evidence bag.

15 Q. In Prosecution Exhibit 278?

16 A. It is.

17 Q. All right. Is it a fair and accurate depiction of
18 the evidence bag in Prosecution Exhibit 278?

19 A. It is.

20 TC [MR. MILLER]: Your Honor, the government would move
21 for the admission at this time of Prosecution Exhibit 278A, B,
22 C, D, E, F, G, and H.

23 MJ [Col SPATH]: Noted. Thank you.

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1 TC [MR. MILLER]: If you could provide the witness,
2 please, with Prosecution Exhibit 279.

3 Q. Sir, have you had a chance to look at Prosecution
4 Exhibit 279?

5 A. Yes, sir.

6 Q. All right. Do you recognize it?

7 A. Yes.

8 Q. Did you collect it?

9 A. Yes.

10 Q. And how do you know you collected it?

11 A. It's the -- my handwriting is on the evidence bag.

12 Q. And does it indicate the date and time that you
13 recovered it?

14 A. Yes, the date.

15 Q. And that date is?

16 A. 10/17/2000.

17 Q. And the location, is that in your handwriting?

18 A. It is.

19 Q. Could you read that, please?

20 A. "Room A, floor, outside."

21 Q. And is there any notation as to the recover -- who
22 recovered it?

23 A. Myself.

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1 Q. Is that your handwriting?

2 A. It is.

3 Q. And what is the item?

4 A. It's a tissue and my writing indicates there was a
5 brown substance on the tissue.

6 Q. Placing on the ELM0 Prosecution Exhibit 279A for
7 Identification. Do you recognize that, sir?

8 A. Yes, sir.

9 Q. And what do you recognize it to be?

10 A. The same brown tissue inside the evidence bag.

11 Q. And does it have a -- does Prosecution Exhibit 279A
12 have a K number?

13 A. It does.

14 Q. And what is that K number?

15 A. K36.

16 Q. Looking at the exhibit, actual exhibit itself, does
17 the evidence bag have a YM number on it?

18 A. It does.

19 Q. And what is that number?

20 A. 112.

21 Q. Does it have a 1B number?

22 A. It does.

23 Q. What is that?

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1 A. 57.

2 Q. Is there a K number on it?

3 A. K36.

4 Q. And does that, therefore, match the one, the K number
5 in Prosecution Exhibit 279A?

6 A. It does.

7 Q. Is there a chain of custody form, an FD-192 attached
8 to the evidence bag?

9 A. Yes, sir.

10 Q. All right. Now, as to the green sheet itself, the
11 192 ----

12 A. Yes.

13 Q. ---- take a look at that, please. Does it have a 1B
14 number on it?

15 A. Yes, sir.

16 Q. And what is that 1B number?

17 A. 57.

18 Q. Does it have a YM1 number on it?

19 A. Yes.

20 Q. What is that number?

21 A. 112.

22 Q. Do those match the numbers on the exhibit itself,
23 279?

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1 A. It does.

2 Q. I'm placing on the ELM0 Prosecution Exhibit 279C.

3 Take a look at that, sir. Do you recognize it?

4 A. I do.

5 Q. Is that an exact duplicate of the chain of custody
6 form you've just described?

7 A. It is.

8 Q. Lastly -- excuse me, as to this exhibit -- I'm
9 placing on the exhibit -- on the ELM0, Prosecution
10 Exhibit 279B. Do you recognize that photograph, sir?

11 A. I do.

12 Q. And what do you -- what's contained in that
13 photograph?

14 A. The same evidence bag that I have holding -- holding
15 in my hand.

16 Q. 279?

17 A. Yes, sir.

18 Q. Is that -- is Prosecution Exhibit 279B a fair and
19 accurate depiction of the evidence bag in 279?

20 A. Yes, sir, it is.

21 TC [MR. MILLER]: Move for the admission, Your Honor, of
22 Prosecution Exhibits 279A, B, and C.

23 MJ [Col SPATH]: Noted. Thank you.

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1 TC [MR. MILLER]: If we could provide the witness, please,
2 with Prosecution Exhibit 285.

3 Q. Take a look at that, sir. Do you recognize what's
4 contained in Prosecution Exhibit 285 for Identification?

5 A. Yes, sir.

6 Q. And did you collect that item?

7 A. I did.

8 Q. Is your handwriting contained on the evidence bag?

9 A. It is.

10 Q. And if you could, please, read what it was that you
11 recovered.

12 A. A brush, green in color.

13 Q. And does it indicate from where you recovered it?

14 A. It does.

15 Q. And where is that?

16 A. Room A.

17 Q. And is that in your handwriting?

18 A. It is.

19 Q. And does it indicate who actually recovered it?

20 A. It does.

21 Q. And in whose handwriting is that?

22 A. Myself.

23 Q. All right. And who -- does it indicate who recovered

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1 it?

2 A. SA Miller.

3 Q. And you're SA Miller?

4 A. I'm SA Miller.

5 Q. All right. Placing on the ELMO Prosecution

6 Exhibit 285A. Do you recognize that, sir?

7 A. Yes, sir.

8 Q. And what do you recognize that to be?

9 A. The same green brush located in this evidence bag.

10 Q. All right. Let me see if we can get -- zero in on
11 it. Is there a -- if you can, can you read the K number on
12 that?

13 A. K46.

14 Q. All right. If you would, please, look at the exhibit
15 itself, Prosecution Exhibit 285. Is there a K number on it?

16 A. K46.

17 Q. All right. Does that match the number contained on
18 the photograph, Prosecution Exhibit 285A?

19 A. It does.

20 Q. Is there a YM1 number on the exhibit itself,
21 Exhibit 285?

22 A. Yes, sir.

23 Q. What is that number?

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1 A. 129.

2 Q. Is there a 1B number contained on the exhibit,
3 Prosecution Exhibit 285?

4 A. 88.

5 Q. If you would, please, look at the FD-192, the green
6 sheet itself. All right. Is there a green sheet attached to
7 it?

8 A. Yes.

9 Q. All right. If you would look at the green sheet, the
10 192, does it have any identifying numbers on it?

11 A. Yes.

12 Q. Specifically, does it have a YM number?

13 A. Yes, sir, it does.

14 Q. And what is that YM number?

15 A. 129.

16 Q. Does it have a 1B number?

17 A. 1B88.

18 Q. Do those match the numbers -- do those two numbers
19 match the numbers on the exhibit, Prosecution 285?

20 A. They do.

21 Q. Placing on the ELM0 Prosecution Exhibit 285C. Do you
22 recognize that photograph, sir?

23 A. I do.

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1 Q. Is that an exact duplicate of the green sheet, or the
2 FD-192, you've just described?

3 A. Yes, sir.

4 Q. Placing on the ELM0 Prosecution Exhibit 285B, as in
5 boy. Do you recognize that, sir?

6 A. Yes, sir.

7 Q. All right. And what's contained in that photograph?

8 A. It's an accurate description or photograph of the bag
9 that I have before me, evidence bag.

10 Q. Is that Prosecution Exhibit 285?

11 A. It is.

12 Q. I think you've indicated it is a fair and accurate
13 depiction of it?

14 A. Yes, sir.

15 TC [MR. MILLER]: We would move for the admission, at this
16 time, Your Honor, of Prosecution Exhibit 285A, B, and C.

17 MJ [Col SPATH]: Noted. Thank you.

18 TC [MR. MILLER]: If we could, please, provide the witness
19 with Prosecution Exhibit 289.

20 Q. Sir, have you had a chance to look at Prosecution
21 Exhibit 289?

22 A. Yes, sir.

23 Q. Do you recognize it?

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1 A. I do.

2 Q. What do you recognize it to be?

3 A. Miscellaneous items.

4 Q. Did you collect those items?

5 A. I did.

6 Q. And how do you know you collected them?

7 A. My name and handwriting is on the evidence bag.

8 Q. I'm going to place on the ELMO Prosecution

9 Exhibit 289A. Do you recognize that, sir?

10 A. I do.

11 Q. What do you recognize it to be?

12 A. The same miscellaneous items that I have in the --
13 that I recovered -- or that are contained in this evidence
14 bag.

15 Q. That's in evidence bag 289, correct?

16 A. That's correct, sir.

17 Q. Is there a K number contained in the photograph,
18 Prosecution 289A?

19 A. Yes, sir.

20 Q. What is that number?

21 A. K54.

22 Q. If you would, please, take a look at the bag itself,
23 Prosecution 289. Does it contain a K number?

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1 A. It does.

2 Q. And what is that number?

3 A. K54.

4 Q. All right. Does it match the number contained in
5 Exhibit 289A?

6 A. It does.

7 Q. Does the Exhibit 289 have a YM number written on it?

8 A. It does.

9 Q. What is that number?

10 A. 140.

11 Q. Does it have a 1B number on it?

12 A. It does.

13 Q. And what is that number?

14 A. 98.

15 Q. All right. If you would, please, take a look at the
16 green sheet, the FD-192. Does it contain a YM number?

17 A. It does.

18 Q. What is that number?

19 A. 140.

20 Q. Does it have a 1B number?

21 A. 98.

22 Q. Does it, therefore, match the numbers contained on
23 Prosecution Exhibit 289?

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1 A. It does.

2 Q. I am going to place on the ELMO Prosecution
3 Exhibit 289C, and ask you if you recognize that, sir.

4 A. Yes, sir.

5 Q. Is that an exact duplicate of the green sheet
6 attached to Prosecution Exhibit 289?

7 A. It is.

8 Q. The one that you've just described?

9 A. Yes, sir.

10 Q. Lastly, I'm placing -- as to this exhibit, I'm
11 placing on the ELMO Prosecution Exhibit 289B for
12 Identification. Ask you if you recognize that, sir?

13 A. I do.

14 Q. What's contained in that photograph?

15 A. It is a picture that's an accurate description of the
16 actual picture of the evidence bag.

17 Q. So it is a picture of the evidence bag in Prosecution
18 289?

19 A. Yes.

20 Q. Is it a fair and accurate depiction of it?

21 A. It is.

22 TC [MR. MILLER]: Your Honor, the government would move
23 for the admission of Prosecution Exhibits 289A, B, and C.

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1 MJ [Col SPATH]: Noted. Thank you.

2 TC [MR. MILLER]: Provide the witness with Prosecution
3 Exhibit 293, please.

4 Q. Sir, have you had an opportunity to look at that?

5 A. Yes, sir.

6 Q. Looking at Prosecution Exhibit 293, did you collect
7 those items?

8 A. I did.

9 Q. And how do you know you collected them?

10 A. My writing is on the evidence bag that contains the
11 items.

12 Q. All right. And if you could, please, read into the
13 record how you described the item that you recovered.

14 A. Simply described them as miscellaneous items.

15 Q. All right. And is there a location?

16 A. Room A on the east wall.

17 Q. I'm assuming that you did almost all your searching,
18 then, therefore, in Room A, correct?

19 A. Pretty much, sir, yes.

20 Q. And by Room A, we're referring to the Room A in the
21 scheme or the chart, Prosecution 1030?

22 A. Yes, sir. Yes, sir.

23 Q. Placing on the ELMO Prosecution Exhibit 293. Do you

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1 recognize that, sir?

2 A. I do.

3 Q. What do you recognize it to be?

4 A. Miscellaneous items.

5 Q. All right. And those items, are they contained in
6 Prosecution Exhibit 293?

7 A. Yes.

8 Q. Can you make out the K number in this photograph?
9 Hold on. Let me see if I can blow it up a little bit.

10 A. K70.

11 Q. Okay. Placing on the ELM0 Prosecution Exhibit 293B
12 for Identification. Do you recognize the items in that
13 photograph?

14 A. Yes, sir.

15 Q. And are those items contained in the Exhibit 293?

16 A. Yes.

17 Q. Is there a 1B -- or excuse me, a K number contained
18 on Prosecution Exhibit 293B?

19 A. K70.

20 Q. All right. Placing on the ELM0 Prosecution
21 Exhibit 293C for Identification. Do you see the item
22 contained in that photograph?

23 A. Yes, sir.

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1 Q. And do you recognize it?

2 A. Yes.

3 Q. What is it?

4 A. It's a cigarette butt.

5 Q. And did you recover it?

6 A. I did.

7 Q. Is it contained in the exhibit, Prosecution 293?

8 A. Yes.

9 Q. Is there a K number attached to the photograph,
10 Prosecution Exhibit 293C?

11 A. K70.

12 Q. Placing on the ELM0 Prosecution Exhibit 293D, David.
13 Ask you to take a look at those items, please. Do you
14 recognize those items?

15 A. I do.

16 Q. Did you collect them?

17 A. Yes.

18 Q. Are those items contained in the exhibit, Prosecution
19 Exhibit 293?

20 A. They are.

21 Q. Is there a K number attached to the photograph,
22 Prosecution 293D?

23 A. Yes, sir.

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1 Q. And what is that number?

2 A. K70.

3 Q. Placing on the ELM0 Prosecution Exhibit 293E, ask you
4 to take a look at that. Do you see that, sir?

5 A. Yes, sir.

6 Q. All right. Do you recognize it?

7 A. I do.

8 Q. Did you collect it?

9 A. Yes.

10 Q. Is it contained in the exhibit, Prosecution 293?

11 A. It is.

12 Q. And is there a K number attached to the exhibit,
13 Prosecution Exhibit 293E, Edward?

14 A. K -- K70.

15 Q. If you would, take a look at the bag itself. When I
16 say "the bag itself," Prosecution Exhibit 293. Take a look at
17 that bag.

18 A. Yes, sir.

19 Q. Does it contain a K number?

20 A. It does.

21 Q. What is the K number contained on the bag, 293?

22 A. K70.

23 Q. Would that match the K number on Prosecution

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1 Exhibits 293A, B, C, D, and E?

2 A. It does.

3 Q. Is there a YM number on the exhibit itself, 293?

4 A. Yes.

5 Q. What is that number?

6 A. 146.

7 Q. Is there a 1B number contained on the Prosecution
8 Exhibit 293?

9 A. There is.

10 Q. And what is that number?

11 A. 109.

12 Q. I think you indicated that the handwriting as to the
13 recovery, description, is your handwriting?

14 A. It is.

15 Q. If you would, please, take a look at the FD-192, the
16 chain of custody form.

17 A. Yes, sir.

18 Q. All right. So looking at the official chain of
19 custody form, does it have a YM number on it?

20 A. It does.

21 Q. What is that number?

22 A. 146.

23 Q. Does it have a 1B number?

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1 A. It does.

2 Q. What is that number?

3 A. 109.

4 Q. All right. Do those numbers match the numbers
5 contained on the evidence bag itself, 293?

6 A. They do.

7 Q. Placing on the ELMO Prosecution Exhibit 293G, ask you
8 to take a look at that. Do you recognize that, sir?

9 A. Yes, sir.

10 Q. And what do you recognize it to be?

11 A. The 192 with Special Agent Joseph McNamara as being
12 the collector.

13 Q. Is it an exact duplicate of the chain of custody
14 form, or the 192 you've just described?

15 A. It is.

16 Q. Placing on the ELMO photograph -- Prosecution
17 Exhibit 293F. Do you recognize that photograph, sir?

18 A. I do.

19 Q. And what is contained in that photograph?

20 A. It's the actual evidence bag that I have in front of
21 me.

22 Q. Is it a fair and accurate depiction of the evidence
23 bag, Prosecution Exhibit 293?

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1 A. It is.

2 TC [MR. MILLER]: Your Honor, the government would move
3 for the admission of Prosecution Exhibit 293A, B, C, D, E, and
4 F, and G.

5 MJ [Col SPATH]: Noted. Mr. Miller, let me ask, how many
6 more exhibits do you have with this witness?

7 TC [MR. MILLER]: I have a few, Your Honor. If I could, I
8 have two -- well, this would be a good time, if you want to
9 take a break.

10 MJ [Col SPATH]: So then, in general, how much longer do
11 you think this witness is going to be?

12 TC [MR. MILLER]: I would say probably another -- let
13 me take -- just give me a second here, Your Honor.

14 MJ [Col SPATH]: No worry. No worry.

15 TC [MR. MILLER]: He probably has about seven or eight
16 more exhibits, and that would be it.

17 MJ [Col SPATH]: After that, okay. And then the second
18 witness today, in general about how long are they?

19 TC [MR. MILLER]: About half an hour.

20 MJ [Col SPATH]: Perfect. Okay. We'll try to get through
21 both. We'll take ten minutes, we'll come back. We're in
22 recess.

23 [The R.M.C. 803 session recessed at 1526, 13 February 2018.]

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1 [The R.M.C. 803 session was called to order at 1542,
2 13 February 2018.]

3 MJ [Col SPATH]: These commissions are called to order.
4 All the parties are again present. The witness remains on the
5 stand. I know you will remember you're still under oath.

6 Mr. Miller.

7 TC [MR. MILLER]: Thank you very much, Your Honor.

8 If we could provide the witness, please, with
9 Prosecution Exhibit 299. Sir, give me just one second,
10 please.

11 [Pause.]

12 TC [MR. MILLER]: Show him -- let's do 299 first.

13 Questions by the Trial Counsel [MR. MILLER]:

14 Q. Please take a look at 299. Sir, if you would,
15 please, take a look at Prosecution Exhibit 299. Do you
16 recognize it, sir?

17 A. Yes, sir.

18 Q. And what do you recognize it to be?

19 A. Evidence bag. If I could have, please have the
20 sergeant open it ----

21 Q. Sure.

22 A. ---- to identify it positively.

23 Q. Sir, have you had an opportunity to look at

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1 Prosecution Exhibit 299 for Identification?

2 A. I did.

3 Q. And do you recognize it?

4 A. I do.

5 Q. Did you collect it?

6 A. Yes, sir.

7 Q. And how do you know you collected it?

8 A. It's my writing on the evidence bag, and I recognize
9 the items.

10 Q. And what are the items?

11 A. They're four jugs, containers.

12 Q. And from where did you collect them?

13 A. Room C.

14 Q. We're talking about Room C in Prosecution

15 Exhibit 1030, the chart, correct?

16 A. Yes, sir.

17 Q. Placing on the ELM0 a photograph, Prosecution

18 Exhibit 299A, ask you to look at that, sir. Do you recognize
19 that?

20 A. I do.

21 Q. What do you recognize that to be?

22 A. It's the -- it's a picture of the items before me.

23 Q. Four of the jugs?

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1 A. Yes.

2 Q. I don't know if you can, but can you make out the --
3 it may be difficult, but can you make out the K number in it?

4 A. K93.

5 Q. I'm placing on the ELM0 Prosecution Exhibit 299B, and
6 ask you if you -- oops -- recognize that, sir?

7 A. I do.

8 Q. What do you recognize that to be?

9 A. The two yellow jugs.

10 Q. So there's a total of six jugs or is it -- if you
11 could, please.

12 A. There is a total of four jugs, sir. And before me
13 one of the jugs has a green cap and the other a yellow cap
14 located inside the evidence bag.

15 Q. Okay. So those would be part of the four that have
16 been identified in Prosecution Exhibit 299A; is that correct?

17 A. Yes, sir.

18 Q. Looking at the exhibit itself, if you would, please,
19 299C. Does it have a K number?

20 A. It does.

21 Q. And what is that number?

22 A. K93.

23 Q. Does that match the K number in Prosecution

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1 Exhibit 299A?

2 A. It -- it ----

3 Q. If you can make it out.

4 A. It does.

5 Q. It does? All right. Does the evidence bag itself
6 have a YM number on it?

7 A. It does.

8 Q. What is that number, sir?

9 A. 112. I'm sorry, 172.

10 Q. All right. Does it have a 1B number?

11 A. 1B73.

12 Q. Is there an official FD-192 attached to the exhibit?

13 A. Yes.

14 Q. All right. If you would, take a look at the 192,
15 that form.

16 A. All right.

17 Q. Does it have a 1B number on it?

18 A. Yes, 1B73.

19 Q. And does it have a YM number?

20 A. 172.

21 Q. Do those numbers match the numbers contained on the
22 Exhibit 299?

23 A. It does.

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1 Q. Going back to the Exhibit 299, do you recognize any
2 of your handwriting on it?

3 A. On the actual exhibit, sir? I'm sorry.

4 Q. On the actual exhibit, yes, sir.

5 A. Just on the evidence bag, sir. Not the ----

6 Q. Not on the jugs, but on the evidence ----

7 A. I'm sorry, on the evidence bag.

8 Q. Evidence bag, yes.

9 A. On the evidence bag, yes.

10 Q. If you could, what is in your handwriting?

11 A. The date of recovery, 10/17/2000, recovered by
12 Miller. That's myself. And the description and location, the
13 location being four -- "Room C, four jugs."

14 Q. Placing on the ELMO Prosecution 299D for
15 Identification. Do you recognize this particular green sheet,
16 FD-192?

17 A. I do.

18 Q. Is it an exact duplicate of the one that you've just
19 described?

20 A. It is.

21 Q. I'm placing on the ELMO Prosecution Exhibit
22 Number 299C. Do you recognize that, sir?

23 A. I do.

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1 Q. And what do you recognize it to be?

2 A. It's the photograph of the actual evidence bag before
3 me.

4 Q. And that's Prosecution Exhibit 299?

5 A. It is.

6 Q. Fair and accurate depiction of it?

7 A. Yes, sir.

8 TC [MR. MILLER]: Move for the admission, Your Honor, of
9 Prosecution Exhibit 299A, B, C, and D.

10 MJ [Col SPATH]: Noted. Thank you.

11 TC [MR. MILLER]: If you could place before the witness
12 Prosecution Exhibit 298.

13 Q. If you would -- do you need that opened, sir?

14 A. Yes, sir, please.

15 Q. Have you had a chance to look at Prosecution
16 Exhibit 298?

17 A. Yes, sir.

18 Q. Do you recognize it?

19 A. I do.

20 Q. Did you collect it?

21 A. I did.

22 Q. And how do you know you collected it?

23 A. My -- I recognize the items as well as the -- my

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1 writing on the evidence bag.

2 Q. And what does the writing, your writing on the
3 evidence bag, indicate?

4 A. Indicates the date of recovery, which is 10/17/2000,
5 recovered by Miller, myself. And the location, Room C, and
6 the description, "Three yellow jugs with green caps."

7 Q. Placing on the ELMO Prosecution Exhibit 298A. Do you
8 recognize those three jugs?

9 A. I do.

10 Q. All right. Are those the three jugs contained in
11 Prosecution Exhibit 298?

12 A. They are.

13 Q. All right. Now, looking at the exhibit itself,
14 Prosecution Exhibit 298, does it have a YM number on it?

15 A. Yes.

16 Q. What is that number?

17 A. 171.

18 Q. Does it have a 1B number?

19 A. This does, yes. 1B32.

20 Q. If you would look and see if there is an actual green
21 sheet, a 132 [sic], attached to the exhibit?

22 A. Yes.

23 Q. Could you look at that, please. Does it have a YM

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1 number?

2 A. It does.

3 Q. What is it?

4 A. 171.

5 Q. Does it have a 1B number?

6 A. It does.

7 Q. What is that?

8 A. 72.

9 Q. Does it match the YM1 number and the 1B number on the
10 actual Exhibit 298?

11 A. It does.

12 Q. I'm placing on the ELM0 Prosecution Exhibit 298C. Do
13 you recognize that, sir?

14 A. I do.

15 Q. And is that an exact duplicate of the chain of
16 custody form which you have just described?

17 A. It is.

18 Q. I'm also placing on the ELM0 -- or I am now placing
19 on the ELM0 Prosecution Exhibit 298B, as in boy. Do you
20 recognize that, sir?

21 A. I do.

22 Q. What do you recognize it to be?

23 A. It's a picture of the evidence bag that I'm currently

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1 holding.

2 Q. Is that the evidence bag in Prosecution Exhibit 298?

3 A. Yes, it is.

4 Q. Is it a fair and accurate depiction of it?

5 A. It is.

6 TC [MR. MILLER]: Your Honor, the government would move
7 for the admission of Prosecution Exhibit 298A, B, and C.

8 MJ [Col SPATH]: Noted. Thank you.

9 Q. Sir, you previously identified this photograph,
10 Prosecution Exhibit 279A. Do you recognize that item?

11 A. I do.

12 TC [MR. MILLER]: If we could use the monitor for a
13 second, Your Honor.

14 Q. I'm placing before you a photograph, Prosecution
15 Exhibit 352. Do you recognize Prosecution Exhibit 352 for
16 Identification?

17 A. I do.

18 Q. And what do you recognize that photograph to show, in
19 a general sense?

20 A. Room A.

21 Q. All right. Is that the entrance to the blue door?

22 A. It is.

23 Q. Do you see Prosecution Exhibit 279 in that

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1 photograph?

2 A. I do.

3 Q. And where is it?

4 A. The right side, bottom part of the photograph.

5 Q. All right. Thank you.

6 After the search of the Site 1, did you do any other
7 additional land sites?

8 A. I did.

9 Q. All right. And before we leave that, there's a name
10 at the bottom of that particular chart, 1030, Madinat
11 Al-Shaab, correct?

12 A. Madinat Al-Shaab.

13 Q. All right. Was that the official name of Site 1?

14 A. It was.

15 Q. Where did you next go? What was the next site that
16 you had occasion to search?

17 A. It was a residence location.

18 Q. All right. And where was that? When you went, did
19 you go alone? Did you go -- if you could describe for the
20 court how it was that you came to go to the next site.

21 A. Back at our meeting they indicated there would be a
22 second site and we would proceed to it as a team. And we
23 went -- went to that site the next day.

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1 Q. And when you arrived there, were there any Yemeni law
2 enforcement present?

3 A. There was.

4 Q. Did you have occasion to meet with them?

5 A. I did.

6 Q. Could you describe for the court, please, what
7 conversations you had.

8 A. They had indicated that they had collected items, as
9 they -- as they did at the previous location, and in this case
10 returned all the items, and they were located inside the
11 location that they had just secured, waiting for us.

12 Q. Did they indicate that they had replaced them
13 randomly or had they replaced them where they thought they had
14 seized them or found them?

15 A. Where they had indicated they seized them.

16 Q. Did they show anything to you? Did you see anything?
17 Did they provide you with any documentation to aid you?

18 A. Pictures, sir.

19 Q. All right. Describe what it was that you saw.

20 A. Pictures of all the items inside that location that
21 we identified as Site 2, YM2.

22 Q. And what happened to those photographs?

23 A. We did not take them at that time.

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1 Q. Did the Yemeni law enforcement retain them?

2 A. They did.

3 Q. These discussions and these photograph books that
4 were shown to you, was that done before, after, or during the
5 search?

6 A. Before.

7 Q. How long did you search Site 2?

8 A. I'd say approximately six to seven hours.

9 Q. All right.

10 TC [MR. MILLER]: If we could, please, pull up
11 Prosecution -- photograph 523.

12 Q. Do you recognize -- wait. I'll wait until it comes
13 up.

14 Placed on the monitor is Prosecution Exhibit 523. Do
15 you recognize that photograph, sir?

16 A. I do, sir.

17 Q. All right. It will come up on the big screen. And
18 what do you recognize that photograph to be?

19 A. That is the site that we searched the second day.

20 TC [MR. MILLER]: Your Honor, I believe we've previously
21 moved for introduction of it. I would move it again at this
22 time.

23 MJ [Col SPATH]: We have. Thank you. Noted.

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1 TC [MR. MILLER]: Foundational. Foundation.

2 Q. What area of the site did you search?

3 A. I searched the -- the west side driveway location
4 outside the residence.

5 Q. All right. If we could, please, Prosecution
6 Exhibit 520. I'm showing you a photograph, Prosecution
7 Exhibit 520 for Identification. Do you recognize this
8 photograph, sir?

9 A. I do.

10 Q. And what do you recognize -- what does it depict?

11 A. It's the site location, and the specific area that I
12 searched was off to the right near the tin wall, off to the
13 right, metal wall.

14 Q. And how tall was the tin wall?

15 A. I'd say approximately ten feet, approximate.

16 Q. Could you tell whether or not it blocked the view
17 from the house immediately on the other side of it?

18 A. It did.

19 Q. All right. Did the tin appear new or old?

20 A. New.

21 Q. And why did it appear new to you, sir?

22 A. There was no rust on it, and it looked like it was
23 recently fabricated within the last year. So I -- based on

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1 that, I felt it was new.

2 Q. Prosecution Exhibit 517, please. I'm showing you a
3 photograph, Prosecution Exhibit 517 for Identification. Do
4 you recognize that, sir?

5 A. I do.

6 Q. And what do you recognize that to be?

7 A. The location that I searched is straight in front of
8 me.

9 Q. All right. And is the tin wall contained in that
10 photograph?

11 A. It is.

12 Q. And just in the general sense, is it on the left or
13 right side?

14 A. The right side.

15 Q. All right. Could you circle it, please?

16 A. **[Did as directed.]**

17 Q. All right. There we go, okay.

18 TC [MR. MILLER]: Just for the purposes of the record,
19 Your Honor, actually he's circled a tin wall. It would be on
20 my left, I guess my left side.

21 MJ [Col SPATH]: Middle way up the photograph.

22 TC [MR. MILLER]: Yes, Your Honor.

23 MJ [Col SPATH]: A little over middle way. That works.

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1 Thanks.

2 TC [MR. MILLER]: Yes, sir. Thank you. If we could look
3 at Prosecution Exhibit 513 for Identification.

4 Q. Do you recognize that photograph, sir?

5 A. I do.

6 Q. And what do you recognize that to be?

7 A. That's the location that I searched, the area to
8 the -- from the rear looking forward and to the left of the
9 location in between the house and the tin wall.

10 Q. And why did you refer to it as a driveway?

11 A. It was a size enough for a vehicle to pull in from
12 the front.

13 Q. All right. 514, please, for Identification. I'm
14 showing you, lastly, Prosecution Exhibit 514. Do you
15 recognize that?

16 A. I do.

17 Q. And what do you recognize that photograph to be?

18 A. It's another photograph from the rear looking forward
19 of the west side driveway that I searched.

20 Q. There appears to be a shadow cast in that; is that
21 correct?

22 A. Yes.

23 Q. And what is -- if you know, what was providing that

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1 shade?

2 A. The actual wall.

3 Q. The tin wall that you've described?

4 A. The tin wall.

5 TC [MR. MILLER]: We would again move for the admission of
6 520, 517, 513, and 514, Your Honor.

7 MJ [Col SPATH]: Noted. Thank you.

8 Q. Did you notice anything of interest? Was there
9 anything of interest that you observed in that area?

10 A. I did. If you look at the -- looks like a large
11 metal box, and inside that metal box ----

12 Q. Let me stop you there so we have the record. We're
13 talking about the metal box in Prosecution 514, correct?

14 A. Correct.

15 Q. Okay. Continue.

16 A. There's a fabricated item that contained water, and
17 it was also cut in the front part, as I'm looking at it, and
18 there was two blocks off to the -- the left and right, right
19 in front, to look like what appears to be four cinderblocks on
20 each side.

21 Q. For the record again, the metal box you see, about --
22 could you describe where in the photograph it is?

23 A. Halfway up the -- around center of the house on the

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1 west side.

2 Q. All right. If we could, please, Prosecution
3 Exhibit 515 for Identification. Do you recognize that
4 photograph, sir?

5 A. I do.

6 Q. And is that the box to which you referred?

7 A. Yes.

8 Q. And could you, again, describe why it was important
9 to you or why it was of interest to you?

10 A. We started talking about that box and the possibility
11 that a boat motor was tested inside because of the water
12 located and the way it was cut, along with the two brick
13 items ----

14 Q. All right.

15 A. ---- to possibly hold up a boat of some kind.

16 Q. And is that how it appeared when you first saw
17 it ----

18 A. It is.

19 Q. ---- that photograph? Is that how the items were?

20 A. Yes, sir.

21 Q. That's how they were found?

22 A. That's how they were found, yes.

23 Q. All right. Prosecution Exhibit 516 for

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1 Identification. And do you recognize Prosecution Exhibit 516?

2 A. I do.

3 Q. And what is contained in that photograph?

4 A. As best I can recall, water.

5 Q. All right. Is that the metal box to which you
6 earlier referred?

7 A. Yes, sir.

8 TC [MR. MILLER]: Again, Your Honor, we have already moved
9 for the admission of those. This is just additional
10 foundation.

11 MJ [Col SPATH]: Understand. Noted.

12 TC [MR. MILLER]: Thank you.

13 Q. Did you have occasion to seize various pieces of --
14 various pieces of evidence at that site?

15 A. I did.

16 TC [MR. MILLER]: Permission to use the ELM0, Your Honor?

17 MJ [Col SPATH]: You may.

18 TC [MR. MILLER]: If we could provide the witness, please,
19 Prosecution Exhibit 261 -- 461.

20 Q. Sir, have you had a chance to look at Prosecution
21 Exhibit 461 for Identification?

22 A. Yes, sir.

23 Q. Do you recognize it?

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1 A. I do.

2 Q. Did you seize it?

3 A. If I could have the sergeant open it up so I can get
4 a -- take a closer look, I would appreciate it.

5 Q. Sure.

6 A. I can't see the ----

7 Q. Have you had a chance to look at the exhibit now,
8 461?

9 A. Looking for the description of it. I can't really
10 see it.

11 Q. Would you like him to open that bag, also?

12 A. Ah.

13 Q. Have you had an opportunity to look inside those
14 bags?

15 A. Yes, sir, I did.

16 Q. Have you been able to find the original packaging?

17 A. Yes.

18 Q. Is that your packaging?

19 A. It is.

20 Q. And do you recognize it?

21 A. I do.

22 Q. Did you seize the item, 461?

23 A. I did.

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1 Q. And how do you know you seized it?

2 A. My writing is on the evidence bag.

3 Q. And what was it that you found? Or I guess it would
4 be -- a better word would be collected.

5 A. Two pieces of red and black fiber and one piece of
6 wood.

7 Q. And on what date?

8 A. 10/18 ----

9 Q. All right. And that was the day of the search?

10 A. ---- 2000. Yes, sir.

11 Q. And where did you find it?

12 A. Located on the driveway on the west side.

13 Q. Would that be the area near the box with the water?

14 A. That's correct, sir.

15 Q. Placing on the ELM0 Prosecution Exhibit 461A for
16 Identification. Do you recognize that, sir?

17 A. I do.

18 Q. What do you recognize that to be?

19 A. The same items, a picture of the items located inside
20 this evidence bag.

21 Q. So the items in the picture are the same items
22 contained in Prosecution Exhibit 461?

23 A. Yes, sir.

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1 Q. Is there a K number contained on Prosecution 461A?

2 A. Yes.

3 Q. All right. And what is the K number?

4 A. K10.

5 Q. Looking at the bag itself, the evidence, does it have
6 a YM2 number on it?

7 A. Yes, sir, 139.

8 Q. All right. And is the handwriting on the bag yours?

9 A. It is.

10 Q. And did you actually package it?

11 A. Yes, sir.

12 Q. If you would, please, take a look and see, is there a
13 FD-192 or green sheet attached to the Exhibit 461?

14 A. Yes.

15 Q. If you would look at that, please. Does that
16 FD-130 -- 192 have a YM number on it?

17 A. It does.

18 Q. And what is that number?

19 A. 139.

20 Q. And does that match the number contained on the
21 Exhibit 461?

22 A. Yes, sir.

23 Q. Was the same search protocol employed at the second

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1 site?

2 A. Yes, sir.

3 Q. And who was the custodian collecting the evidence?

4 A. Special Agent Joseph McNamara.

5 Q. Placing on the ELMO Prosecution Exhibit 461C. Do you
6 recognize that, sir?

7 A. I do.

8 Q. And is that a green sheet?

9 A. It is.

10 Q. And is that green sheet an exact duplicate of the one
11 that you've just described?

12 A. It is.

13 Q. Placing on the ELMO Prosecution Exhibit 461B. Do you
14 recognize that, sir?

15 A. I do.

16 Q. And what do you recognize that to be?

17 A. It's a picture of the bag that I have in my hands.

18 Q. That's Prosecution Exhibit 461?

19 A. Yes, sir.

20 Q. Is it a fair and accurate depiction of it?

21 A. It is.

22 TC [MR. MILLER]: Your Honor, the government would move
23 for the admission of 461A, B, and C.

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1 MJ [Col SPATH]: Thank you. Noted.

2 TC [MR. MILLER]: If we could provide the witness with
3 Prosecution Exhibit 465.

4 Q. Would you like that opened, sir?

5 A. Yes, sir.

6 Q. Have you had a chance to look at 465?

7 A. Yes, sir.

8 Q. Did you collect that evidence?

9 A. I did.

10 Q. And how do you know that you did?

11 A. I have the -- before me the evidence bag with my
12 writing on it that ----

13 Q. Does it indicate where you recovered the items?

14 A. Yes, sir.

15 Q. And where did you recover them?

16 A. Driveway, west side.

17 Q. Same area where the water in the container?

18 A. Yes, sir.

19 Q. All right. Does it indicate the date?

20 A. Date, 10/18/2000.

21 Q. And by whom was it recovered?

22 A. SA Miller, myself.

23 Q. In your handwriting?

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1 A. Yes, sir.

2 Q. I'm placing on the ELM0 Prosecution Exhibit 465A. Do
3 you recognize that, sir?

4 A. I do.

5 Q. And what is contained in that photograph?

6 A. The picture of the items that are in my hand in the
7 evidence bag.

8 Q. The items recovered in 465?

9 A. Yes, sir.

10 Q. And is there a K number -- excuse me, a K number
11 attached to the photograph 465A?

12 A. K123.

13 Q. If you would, look at the exhibit itself, please.
14 Does the exhibit itself contain a YM number?

15 A. Yes.

16 Q. And what is that YM number?

17 A. 128.

18 Q. Is there a 1B number on the exhibit itself, 465?

19 A. 1B161.

20 Q. Is there a chain of custody FD-192 attached to it?

21 A. There is.

22 Q. Would you take a look at that, please. Does it have
23 a YM number?

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1 A. It does.

2 Q. And what is that number?

3 A. 128.

4 Q. And does it have a 1B number?

5 A. It does.

6 Q. What is that?

7 A. 161.

8 Q. Does that match the numbers contained on the actual
9 Exhibit 465?

10 A. Yes, sir, it does.

11 Q. Placing on the ELM0 Prosecution Exhibit 465C, sir.
12 Do you recognize that FD-192?

13 A. I do.

14 Q. Is it an exact duplicate of the one that you've just
15 described?

16 A. It is.

17 Q. I'm placing on the ELM0 Prosecution Exhibit 465B, as
18 in boy. Do you recognize that photograph, sir?

19 A. I do, sir.

20 Q. Is that your handwriting on the top where it says
21 date and time, location, recovered by?

22 A. Yes.

23 Q. And what's contained in that photograph?

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1 A. A picture of the actual evidence bag that I have in
2 my hand.

3 Q. And that's Exhibit 465?

4 A. Yes, sir.

5 Q. Is it a fair and accurate depiction of it?

6 A. It is.

7 TC [MR. MILLER]: Move for the admission, Your Honor, of
8 Prosecution Exhibits 465A, B, and C.

9 MJ [Col SPATH]: Noted.

10 TC [MR. MILLER]: If you could hand the witness, please,
11 Prosecution Exhibit 466 for Identification.

12 Q. Would you like that opened?

13 A. I can see the items inside. Thank you.

14 Q. All right. If you would take a look, please, then at
15 466.

16 A. Yes, sir.

17 Q. Do you recognize it?

18 A. I do.

19 Q. Did you recover it?

20 A. I did.

21 Q. And how do you know you did?

22 A. My handwriting on the evidence bag, and I recognize
23 the item inside.

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1 Q. I'm placing on the ELMO Prosecution Exhibit 466A. Do
2 you recognize that, sir?

3 A. I do.

4 Q. And what do you recognize that to be?

5 A. It's a picture of the actual items I have in my hand,
6 evidence.

7 Q. So the items in 466A are the items -- actual items
8 from 466?

9 A. Yes, sir.

10 Q. Is there a 1 -- or is there a K number on Prosecution
11 Exhibit 466A?

12 A. Yes.

13 Q. What is that number?

14 A. K126.

15 Q. If you would look at the bag itself, 466, the
16 exhibit, the physical exhibit. Does it have a K number on it?

17 A. It does.

18 Q. And what is that number?

19 A. K126.

20 Q. So it matches the number contained on 466A?

21 A. It does.

22 Q. All right. And you indicated your handwriting is
23 contained on the bag?

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1 A. Yes, it is.

2 Q. All right. Could you read into the record what it is
3 that you wrote on the evidence bag.

4 A. The item description.

5 Q. Which is?

6 A. "Miscellaneous items, fiber, plastic, pipe, wire, and
7 green tape." Date of recovery was 10/18/2000. Location,
8 driveway on the west side, by SA Miller, myself.

9 Q. Does the bag have a 1B number on it?

10 A. It does.

11 Q. All right. And what is that number?

12 A. 164.

13 Q. Does it have a YM number on it, YM2 number?

14 A. It does.

15 Q. What is that number?

16 A. 131.

17 Q. If you would, please, is there a green sheet, an
18 FD-192 attached to the actual Exhibit 466?

19 A. There is.

20 Q. If you would look at it, please. Does it have a 1B
21 number?

22 A. It does.

23 Q. What is that number?

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1 A. 164.

2 Q. And does it have a YM2 number?

3 A. 131.

4 Q. Do those numbers match the numbers contained on the
5 Exhibit 466?

6 A. They do.

7 Q. Placing on the ELM0 Prosecution Exhibit 466D, David.
8 Do you recognize that FD-192 form?

9 A. I do.

10 Q. Is it an exact duplicate of the FD-192 form that
11 you've just described?

12 A. It is, sir.

13 Q. Placing on the ELM0 Prosecution Exhibit 466B, sir.
14 Do you recognize -- make it a little smaller there for you.
15 Do you recognize that?

16 A. I do.

17 Q. What do you recognize that to be?

18 A. It's a picture of the evidence -- back of the
19 evidence bag that I have before me.

20 Q. Is it a fair and accurate depiction of it?

21 A. It is.

22 Q. And when you say -- when you say it's the evidence
23 bag before you, is that Prosecution Exhibit 466?

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1 A. It is.

2 Q. Placing on the ELM0 Prosecution Exhibit 466C. Do you
3 recognize that photograph, sir?

4 A. I do.

5 Q. What do you recognize it to be?

6 A. A picture of the evidence bag that I have in my
7 hands.

8 Q. All right. Is it the bottom half of it?

9 A. It is.

10 Q. And when we're talking about the bottom half, that's
11 the bottom half of 466, the evidence bag in Prosecution
12 Exhibit 466?

13 A. Yes, sir.

14 Q. Fair and accurate depiction of it?

15 A. It is.

16 TC [MR. MILLER]: Your Honor, the government would move
17 for the admission of 466A, B, C, and D.

18 MJ [Col SPATH]: Noted. Thank you.

19 TC [MR. MILLER]: If we could provide the witness
20 Prosecution Exhibit 467.

21 Q. Would you like that opened, sir?

22 A. No, sir.

23 Q. As to 467, Prosecution Exhibit 467 for

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1 Identification, do you recognize that item, sir?

2 A. I do.

3 Q. Did you collect it?

4 A. I did.

5 Q. And how do you know that?

6 A. My writing and the items.

7 Q. And does it indicate from where you recovered it?

8 A. Yes, sir.

9 Q. And where was that, sir?

10 A. From the driveway, west side.

11 Q. Again, all the evidence you recovered was in and
12 around that water tank?

13 A. It was.

14 Q. And is the date and time of recovery and the location
15 of the recovery in whose handwriting?

16 A. Mine, sir.

17 Q. Placing on the ELM0 Prosecution Exhibit 467A. Do you
18 recognize that, sir?

19 A. I do.

20 Q. And what do you recognize it to be?

21 A. The miscellaneous -- miscellaneous items that I
22 indicated were fiber and wood pieces located inside the
23 evidence bag.

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1 Q. Is that the evidence contained in Prosecution
2 Exhibit 467?

3 A. It is.

4 Q. Is there a K number associated with Prosecution
5 Exhibit 467A?

6 A. Yes, sir.

7 Q. What is that number?

8 A. 127.

9 Q. If you would, look at the bag itself, the exhibit
10 itself. Is there a K number on it?

11 A. It is -- there is.

12 Q. And what is that number?

13 A. 127.

14 Q. And does it match, therefore, the exhibit, the K
15 number in Prosecution Exhibit 467A?

16 A. It does.

17 Q. Is there a 1B number on the Exhibit 467?

18 A. There is.

19 Q. And what is that number?

20 A. 166.

21 Q. Is there a YM2 number on the evidence bag?

22 A. Yes, sir.

23 Q. And what is that number?

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1 A. 133.

2 Q. If you would, please, is there a chain of custody, a
3 192, attached to the exhibit?

4 A. There is.

5 Q. Take a look at it, please. Does it have a 1B number?

6 A. Yes, sir.

7 Q. And what is that 1B number?

8 A. 166.

9 Q. Does it have a YM2 number?

10 A. 133.

11 Q. Do those numbers match the numbers contained on the
12 actual Exhibit 467?

13 A. They do.

14 Q. Placing on the ELM0 Prosecution Exhibit 467D, as in
15 David. Do you recognize that FD-192?

16 A. Yes, sir.

17 Q. Is it an exact duplicate of the one that you've just
18 described?

19 A. It is.

20 Q. Placing on the ELM0 Prosecution Exhibit 467B, as in
21 boy. Do you recognize that, sir?

22 A. I do.

23 Q. And what do you recognize that to be?

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1 A. It's the bottom portion of the -- the evidence bag.

2 Q. The evidence bag in 467?

3 A. Yes.

4 Q. Placing on -- is it a fair and accurate depiction of
5 it?

6 A. It is.

7 Q. I'm placing on the ELMO Prosecution Exhibit 467C. Do
8 you recognize that photograph, sir?

9 A. I do.

10 Q. Hold on. Let me get a better photo of it there.
11 What do you recognize it to be, sir?

12 A. It's the miscellaneous items, pieces of fiber and
13 unknown wood pieces, inside the evidence bag located right
14 here.

15 Q. And the evidence bag being 467; is that correct?

16 A. Yes, sir.

17 Q. Fair and accurate depiction of it?

18 A. Yes, sir.

19 TC [MR. MILLER]: Your Honor, the government would move
20 for the admission of Government's -- or Prosecution
21 Exhibit 467A, B, C, and D.

22 MJ [Col SPATH]: Noted. Thank you.

23 Q. And all of those exhibits, to whom did you surrender

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1 custody?

2 A. Special Agent Joseph McNamara.

3 Q. And that was the protocol that had been established
4 at that particular scene?

5 A. Yes, sir. And the scene before.

6 Q. And as to the photographs that you saw of the second
7 site, were they fair and accurate depictions?

8 A. Yes, sir.

9 Q. Was there anything distorting about them?

10 A. No.

11 TC [MR. MILLER]: I have nothing further of this witness,
12 Your Honor.

13 MJ [Col SPATH]: Thank you.

14 Defense counsel, you may cross-examine.

15 DDC [LT PIETTE]: Defense takes no position.

16 MJ [Col SPATH]: All right. Special Agent Miller, thank
17 you very much again for your testimony. I've said this in the
18 past. I'll continue to say it. I do appreciate people who
19 come down in person for this process. I know it's important
20 to all involved even though it can seem frustrating at times,
21 and I appreciate the time and effort it takes.

22 Separate from that, you'll remember the order I gave
23 you the last couple of times: Don't discuss your testimony

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1 with anyone while you're here or with anyone until we're
2 finished with this issue, which can take some time, as you can
3 tell. I'm not suggesting you don't talk to the other agents
4 who are on the island. Just don't talk about your testimony.
5 Do you understand?

6 WIT: Yes, sir.

7 MJ [Col SPATH]: Thanks. You're excused.

8 [The witness was warned, excused, and withdrew from the
9 courtroom.]

10 MJ [Col SPATH]: Call your next witness.

11 TC [MR. MILLER]: Thank you. The government calls Special
12 Agent Edmond Cronin.

13 Take the witness stand, please. Remain standing and
14 raise your right hand.

15 EDMOND G. CRONIN, civilian, was called as a witness for the
16 prosecution, was sworn, and testified as follows:

17 **DIRECT EXAMINATION**

18 Questions by the Trial Counsel [MR. MILLER]:

19 Q. I'm going to ask you to sit down, please, and if you
20 could, state your name for the record.

21 A. Edmond Gerard Cronin.

22 Q. And your occupation, sir?

23 A. Special Agent with the Federal Bureau of

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1 Investigation.

2 Q. And you're the same Special Agent Cronin who has
3 testified previously in this matter; is that correct?

4 A. Yes, sir.

5 Q. Just by way of reintroduction, you arrived in Yemen
6 to help conduct the search of the COLE, correct?

7 A. Yes, sir.

8 Q. Did you remain on the COLE the entire time?

9 A. No, sir, I did not.

10 Q. All right. Were you reassigned at some point?

11 A. Yes.

12 Q. And what was your reassignment?

13 A. I was tasked to participate in the searches of two
14 residences in greater Aden.

15 Q. And do you remember the first search site?

16 A. Yes, sir, I do.

17 Q. And if you saw a photograph of it, do you think you
18 would remember it?

19 A. Yes, sir.

20 TC [MR. MILLER]: If you would, please, show

21 Prosecution -- photograph, Prosecution Exhibit 337.

22 Permission to use these items, Your Honor, this and -- use the

23 ELMO in a second?

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1 MJ [Col SPATH]: You may.

2 Q. This is a photograph on the -- I'm sorry, on the
3 monitor. My apologies. Do you recognize that photograph,
4 sir?

5 A. Yes, sir, I do.

6 Q. All right. And were you there on the 17th of
7 October?

8 A. Yes, in the year 2000.

9 Q. And did you help or assist in the search?

10 A. Yes, I did.

11 TC [MR. MILLER]: If you could, please, provide the
12 witness with Prosecution Exhibit 266.

13 A. Thank you. I have item 266.

14 Q. All right. Do you recognize that, sir?

15 A. Yes, sir, I do.

16 Q. And what do you recognize it to be?

17 A. The packaging and -- contains cloth fiberglass
18 that -- collected off the crime scene by myself.

19 Q. And how do you know that you collected it?

20 A. It's -- I can recognize my notes and signature, and
21 my notes and name.

22 TC [MR. MILLER]: Again, Your Honor, I believe the court
23 gave permission to use the ELM0?

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1 MJ [Col SPATH]: Absolutely.

2 TC [MR. MILLER]: Thank you, sir.

3 Q. I'm placing on the ELMO Prosecution Exhibit Number --
4 Prosecution Exhibit 266A for Identification. Do you recognize
5 that, sir?

6 A. Yes, sir, I do.

7 Q. What do you recognize that to be?

8 A. Fiberglass material that I collected from the crime
9 scene.

10 Q. And that is the same fiberglass that's contained in
11 the exhibit, Prosecution 266?

12 A. Yes, sir, it is.

13 Q. Now, you indicated that it contained some of your
14 handwriting?

15 A. Yes, sir, the date of the recovery, recovered by, and
16 a description of the item.

17 Q. All right. If you could, please, read that into the
18 record.

19 A. "Date of recovery, October 17th, 2000. Recovered by
20 SA E. Cronin. Description and location, cloth fiberglass
21 work, Room A floor, west wall."

22 Q. Is there a YM number on this particular exhibit?

23 A. There's an IB number -- there's a ----

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1 Q. Do you see the case number on the evidence?

2 A. Yes, I do.

3 Q. Is there a number underneath it?

4 A. Yes, there is.

5 Q. What is that number?

6 A. YM1-138.

7 Q. Is there a chain of custody form, an FD-192, attached
8 to your exhibit?

9 A. Yes, sir, there is.

10 Q. All right. And that's attached to Prosecution
11 Exhibit 266, correct?

12 A. Yes, it is.

13 Q. Does the chain of custody form have a YM number on
14 it?

15 A. Yes, it does.

16 Q. And what is that number?

17 A. YM1-138.

18 Q. And does it match the number contained on the actual
19 exhibit?

20 A. Yes, it does.

21 Q. I'm placing on the ELM0 Prosecution Exhibit Number
22 YM -- excuse me, Prosecution Exhibit 266C. Do you recognize
23 that, sir?

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1 A. Yes, sir, I do.

2 Q. What do you recognize it to be?

3 A. It matches the piece of paper I have in my hand.

4 Q. Is it an exact duplicate of the FD-192 you've just
5 described?

6 A. Yes, sir, it is.

7 Q. It indicates that the person who accepted it or
8 collected it was Joseph McNamara?

9 A. Yes, sir.

10 Q. And why is his name contained on the official green
11 sheet or 192?

12 A. He would have been the member of the team designated
13 as the person accepting the evidence into custody after it was
14 collected off the crime scene.

15 Q. Is that a standard procedure?

16 A. Yes, sir, it is.

17 Q. If you had been back in the States at a murder scene
18 or a dope -- a bank robbery scene or drug house, would you
19 have used the same sort of procedure?

20 A. Yes, sir.

21 Q. I take it that's a fair and accurate -- I think I
22 asked you, but that's a duplicate of it?

23 A. Yes, sir, it is.

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1 Q. Placing on the ELM0 Prosecution Exhibit 266B and ask
2 you if you recognize that, sir?

3 A. Yes, sir, I do.

4 Q. And what's contained in that photograph?

5 A. An evidence collection bag.

6 Q. Is that the evidence collection bag in Prosecution
7 Exhibit 266?

8 A. Yes, it is.

9 Q. Is it a fair and accurate depiction of it?

10 A. Yes.

11 Q. Again, for the record, the date and time of recovery,
12 recovered by, and description are all in your handwriting?

13 A. Yes, sir, they are.

14 TC [MR. MILLER]: Move for the admission, Your Honor, of
15 Prosecution Exhibits 266A, B, and C.

16 MJ [Col SPATH]: Noted. Thanks.

17 Q. After the search of Site 1, did you -- were you
18 involved in the search of any other land searches?

19 A. Yes, sir, I was.

20 Q. And where was that?

21 A. It was, again, in greater Aden, a residence, a
22 standalone, one-story residence.

23 Q. If you were shown a photograph, do you think you

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1 would recall it?

2 A. Yes, sir.

3 Q. I'll show you a photograph, Prosecution Exhibit 526,
4 on the monitor. Do you recognize that, sir?

5 A. Yes, sir, I do.

6 Q. All right. And what do you recognize that to be?

7 A. The residence that we searched in Aden back in
8 October of 2000.

9 Q. Fair and accurate depiction of it as it appeared that
10 day?

11 A. Yes, sir.

12 TC [MR. MILLER]: All right. Show, please, photograph
13 Prosecution Exhibit 523.

14 Q. Do you recognize that photograph, sir?

15 A. Yes, sir. That's the backyard and back -- rear of
16 the residence.

17 Q. Do you remember what areas of the site that you
18 searched?

19 A. Yes.

20 Q. All right. And what areas were those?

21 A. A kitchen inside the house, a bathroom inside the
22 house, and I was out in the backyard.

23 Q. All right. Were there any Yemeni law enforcement

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1 personnel at the scene during the search?

2 A. They were outside in the street, but they were not
3 inside the residence or inside the property boundaries.

4 Q. How did you get to the site?

5 A. By vans.

6 Q. And when you arrived, were the Yemeni law enforcement
7 present?

8 A. For the second scene, there were Yemeni personnel
9 around, but they were not in the house. I did not see them in
10 or around the property.

11 Q. All right. Do you know whether or not any of the FBI
12 personnel met with them?

13 A. The team leaders, when we arrived at each scene,
14 certainly had exchanges with Yemeni personnel.

15 Q. Were you able to detect what was being discussed?

16 A. At the first residence -- at the first property we
17 searched, I observed a photo log of -- with new Polaroid
18 pictures in it, of the residence and/or items from there.

19 Q. What about at the second scene?

20 A. No, I did not see any of that.

21 Q. What were you looking for at the second scene?

22 A. Items that would have been comprised to make up any
23 explosive materials and/or any remnants, materials used to

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1 conceal or transport the explosives and the -- potentially the
2 ship that was used.

3 Q. Was there a search protocol in place?

4 A. Sure.

5 Q. And what was that?

6 A. To allow reconnaissance of the scene, allow it to be
7 photographed before other personnel entered.

8 Q. And was there a central repository for the evidence?

9 A. Yes.

10 Q. Could you describe what that protocol or what that
11 procedure was?

12 A. Again, a team member was designated as the collector,
13 and there was a collection point towards the front of the
14 residence.

15 Q. Do you remember who that person was?

16 A. Mr. McNamara again.

17 Q. I'll show you a series of photographs -- excuse me,
18 some evidence.

19 TC [MR. MILLER]: Please provide the witness with
20 Prosecution Exhibit 468. If we could go back to the ELM0.
21 Thank you, sir.

22 Q. Have you had an opportunity to look at
23 Prosecution 468?

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1 A. Yes, sir, I have.

2 Q. Do you recognize it?

3 A. Yes, sir, I do.

4 Q. And did you seize that or collect that evidence?

5 A. Yes, sir, I did.

6 Q. All right. And if you could, please, indicate the --
7 first off, do you recognize your handwriting?

8 A. Yes, sir, I do.

9 Q. On the evidence bag itself in Prosecution 466?

10 A. Yes.

11 Q. And what did you write on that bag that day?

12 A. Case number, date collected, my name, description of
13 the -- description and location of the item collected.

14 Q. What date was it recovered?

15 A. October 18th, 2000.

16 Q. And could you just -- what was the description and/or
17 location?

18 A. It was located in Room F along the north wall in a
19 bureau, a bureau lower drawer. The description of the item is
20 "yellow and brown sleeping pad cover."

21 Q. Placing on the ELM0 Prosecution Exhibit 468A. Do you
22 recognize that, sir?

23 A. Yes, sir, I do.

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1 Q. What do you recognize that to be?

2 A. That's the contents of the bag I'm holding.

3 Q. All right. So that is the evidence in

4 Prosecution 466?

5 A. Yes.

6 Q. I don't know if you can. We'll try. Can you make
7 out a K -- the K number on that? It's all right if you can't.

8 A. K -- K133.

9 Q. All right. If you would, please, look at the actual
10 evidence bag itself. Is there a K number on it?

11 A. Yes, sir, there is.

12 Q. What is that?

13 A. K133.

14 Q. So it matches the K number in Prosecution

15 Exhibit 466A, correct?

16 A. Yes, sir, it does.

17 Q. Excuse me, 468A, correct?

18 A. Yes.

19 Q. Is there a 1B number on the evidence bag? Would you
20 like him to open it?

21 A. No, I'll find it. 1B176.

22 Q. All right. And is there a YM number on it?

23 A. Yes, there is.

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1 Q. What's that?

2 A. YM2-144.

3 Q. All right. Is there a chain of custody form attached
4 to it?

5 A. Yes, sir, there is.

6 Q. All right. If you would, please, look at the chain
7 of custody form, the 192.

8 A. Yes, sir.

9 Q. Does it have a 1B number?

10 A. Yes, sir, it does.

11 Q. Does it have a YM2 number?

12 A. Yes, it does.

13 Q. Do the numbers on the chain of custody form match the
14 1B number and the YM number -- do they match the ones
15 contained on the actual Exhibit 466?

16 A. Yes, they do.

17 Q. All right. Placing on the ELMO Prosecution
18 Exhibit 466 -- 468C. Excuse me. Do you recognize that chain
19 of custody form, FD-192?

20 A. Yes, sir, it's a picture of the 192 in my hand.

21 Q. All right. Is it an exact duplicate of it?

22 A. Yes, it is.

23 Q. Placing on the ELMO Prosecution Exhibit 468B. Do you

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1 recognize that photograph?

2 A. Yes, sir, I do.

3 Q. And what do you recognize it to be?

4 A. It's a photograph of the bag in my possession right
5 here.

6 Q. And that is Prosecution Exhibit 468, correct?

7 A. Yes, sir, it is.

8 Q. Fair and accurate depiction of Prosecution 468?

9 A. Yes, it is.

10 TC [MR. MILLER]: We would move for the admission, Your
11 Honor, of Prosecution 468A, B, and C.

12 MJ [Col SPATH]: Noted. Thanks.

13 TC [MR. MILLER]: Provide the witness with Prosecution
14 Exhibit 470.

15 A. I have 470 in my possession.

16 Q. All right. And do you recognize it?

17 A. Yes, sir, I do.

18 Q. Did you collect it?

19 A. Yes, sir, I did.

20 Q. How do you know you collected it?

21 A. On the -- I recognize the item as well as I recognize
22 my writing of the case number, date collected, name, and
23 description of the item.

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1 Q. All right. Could you read that into the record, what
2 you wrote on the bag?

3 A. Sure. "Date collected, October 18th, 2000,
4 SA E. Cronin. Room F. Date and -- description and location
5 of item, Room F, north wall, floor, blue and yellow covered
6 cloth."

7 Q. And when you have Room F, was that a room number that
8 was designated?

9 A. Yes, sir, it was.

10 Q. By whom?

11 A. By the evidence team leader.

12 Q. Placing on the ELMO a photograph, Prosecution
13 Exhibit 470 -- 470A. Do you recognize that, sir?

14 A. Yes, sir, I do.

15 Q. And what do you recognize that to be?

16 A. It's the item in the bag in my possession.

17 Q. All right. So that is the actual item in
18 Prosecution 470?

19 A. Yes, sir.

20 Q. If you could look at the bag itself, the evidence bag
21 in 470, does it have a YM number on it?

22 A. Yes, sir, YM2-149.

23 Q. Does it have a 1B number on it?

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- 1 A. Yes, sir.
- 2 Q. What is that?
- 3 A. 1B182.
- 4 Q. Does it have a chain of custody form attached to it?
- 5 A. Yes, sir, it does.
- 6 Q. Could you look at that, please?
- 7 A. Yes, sir.
- 8 Q. Does it have a YM number?
- 9 A. Yes, sir.
- 10 Q. What is the number?
- 11 A. YM2-149.
- 12 Q. And does it have a 1B number?
- 13 A. Yes, sir.
- 14 Q. What is that?
- 15 A. 1B182.
- 16 Q. Do those match the numbers contained on the actual
- 17 bag at 470?
- 18 A. Yes, sir, they do.
- 19 Q. Placing on the ELM0 Prosecution Exhibit 470 -- 470C.
- 20 Do you recognize that FD-192 form?
- 21 A. Yes, sir, I do.
- 22 Q. Is it an exact duplicate of the form you've just
- 23 described?

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1 A. Yes, sir.

2 Q. Placing on the ELM0 Prosecution Exhibit 470B. Do you
3 recognize that, sir?

4 A. Yes, sir, I do.

5 Q. What do you recognize that to be?

6 A. It's a picture of the bag in my possession.

7 Q. That's the bag in Prosecution Exhibit 470; is that
8 correct?

9 A. Yes, sir.

10 Q. Is it a fair and accurate depiction of it?

11 A. Yes.

12 TC [MR. MILLER]: We would move for the admission, Your
13 Honor, of Prosecution Exhibit 470A, B, and C.

14 MJ [Col SPATH]: Thank you. Noted.

15 TC [MR. MILLER]: If you'd provide the witness, please,
16 with Prosecution Exhibit 477.

17 Q. Do you recognize that, sir? Prosecution 477, do you
18 recognize it?

19 A. Yes, sir.

20 Q. All right. And what is it?

21 A. It's evidence I collected at that time.

22 Q. And what is the item itself?

23 A. That is currently sealed by the -- covered by this

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1 part of the bag.

2 Q. Let's open it.

3 A. It's a razor, sir.

4 Q. And did you collect it?

5 A. Yes, sir, I did.

6 Q. How do you know you did?

7 A. On the -- it's noted here on the date and time of
8 recovery and my name as recovered by.

9 Q. Is that in your handwriting?

10 A. Yes, sir, it is.

11 Q. All right. If you could, please, the date and time
12 of the recovery, the location, and by whom it was recovered.

13 A. "October 18th, 2000. Room G, north wall, on top of
14 medicine cabinet. Recovered by SA E. Cronin."

15 Q. Placing on the ELMO Prosecution Exhibit 477A. Do you
16 recognize that, sir?

17 A. Yes, sir, I do.

18 Q. What is it?

19 A. That's the razor in the bag.

20 Q. In the bag of 477?

21 A. Yes, sir.

22 Q. And is there a K number on the photograph 477A?

23 A. Yes, sir.

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1 Q. What is it?

2 A. K146.

3 Q. If you would, please, look at the evidence bag
4 itself.

5 A. Yes, sir.

6 Q. Does it have a K number on it?

7 A. Yes, sir, K146.

8 Q. Does that match the number in 477A?

9 A. Yes, sir, it does.

10 Q. Is there a 1B number on the evidence bag, 477?

11 A. Yes, 1B204.

12 Q. And is there a YM number?

13 A. Yes, sir, there is.

14 Q. What is that?

15 A. YM2-172.

16 Q. All right. Is there a chain of custody form attached
17 to that Exhibit 477?

18 A. Yes, sir, there is.

19 Q. Would you look at it, please?

20 A. Yes, sir.

21 Q. Does it have a 1B number?

22 A. Yes, sir, 1B204.

23 Q. Does it have a YM number?

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1 A. Yes, sir, YM2-172.

2 Q. Do those match the numbers contained on the
3 Exhibit 477?

4 A. Yes, sir, they do.

5 Q. Placing on the ELM0 Prosecution Exhibit Number 477C.
6 Do you recognize that, sir?

7 A. Yes, sir. It's a picture of the FD-192 in my hand.

8 Q. All right. So is it an exact duplicate?

9 A. Yes, sir.

10 Q. Placing on the ELM0 Prosecution Exhibit 477B, as in
11 boy. Do you recognize that, sir?

12 A. Yes, sir.

13 Q. What is it?

14 A. It's a picture of the evidence bag in my possession
15 here.

16 Q. And that's Exhibit 4 -- it's a picture of Prosecution
17 Exhibit 477?

18 A. Yes, sir, it is.

19 Q. Fair and accurate depiction of it?

20 A. Yes, sir.

21 TC [MR. MILLER]: Move for the admission, Your Honor, of
22 Prosecution Exhibit 477A, B, and C.

23 MJ [Col SPATH]: Noted. Thank you.

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1 TC [MR. MILLER]: Provide the witness with
2 Prosecution 478.

3 Q. If you'd take a look at that, sir.

4 A. Yes, sir.

5 Q. Do you recognize that, sir?

6 A. Yes, sir, I do.

7 Q. Did you collect it?

8 A. Yes, sir.

9 Q. All right. 478, what is 478?

10 A. It's a green bath towel.

11 Q. And did you write on the evidence bag?

12 A. Yes, sir, I did.

13 Q. What did you write on the evidence bag?

14 A. Case number, date and time recovered, recovered by,
15 description and location.

16 Q. Not the case number, but could you read into the
17 record the remaining things that you wrote on it?

18 A. "Date and time of recovery, October 18th, 2000.
19 Recovered by SA E. Cronin and SA W. Davitch. Description,
20 green towel, Room G, south wall behind door."

21 Q. Is Agent Davitch another FBI agent?

22 A. Yes, sir, he is.

23 Q. Placing on the ELMO Prosecution Exhibit 278A, do you

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1 recognize that?

2 A. Yes, sir, I do.

3 Q. And is that the same towel contained in Prosecution
4 Exhibit 478?

5 A. Yes, sir.

6 Q. All right. I may have identified that as 278A; it
7 should be -- the photograph is 478A. It contains a photograph
8 of ----

9 A. Yes, sir, it does. It is a picture of the towel in
10 my possession.

11 Q. Is that the same towel contained in Prosecution
12 Exhibit 478?

13 A. Yes, sir.

14 Q. If you could, please, look at the evidence bag
15 itself.

16 A. Yes, sir.

17 Q. Does it have a 1B number on it?

18 A. Yes, it does.

19 Q. And what is that number?

20 A. 1B206.

21 Q. Does it have a YM number on it?

22 A. Yes, sir, YM2-174.

23 Q. If you would, does it have a chain of custody or an

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1 FD-192 form attached?

2 A. Yes, sir, it does.

3 Q. All right. If you could look at that form, please.

4 A. Yes, sir.

5 Q. Does it have a 1B number?

6 A. Yes, sir, 1B206.

7 Q. Does it have a YM number?

8 A. YM2-174.

9 Q. Does that match the numbers contained on the exhibit,
10 Prosecution 478?

11 A. Yes, they do.

12 Q. Placing on the ELM0 Prosecution Exhibit 478C. Do you
13 recognize that, sir?

14 A. Yes, sir. It's a picture of the FD-192 in my hand.

15 Q. Is it an exact duplicate of it?

16 A. Yes, sir, it is.

17 Q. Placing on the ELM0 Prosecution Exhibit 478B, as in
18 boy. Do you recognize that photograph?

19 A. Yes, sir.

20 Q. And what is that -- what's contained in that
21 photograph?

22 A. It's a picture of the evidence bag in my hand.

23 Q. That is the evidence bag in Prosecution Exhibit 478?

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1 A. Yes, sir, it is.

2 Q. Fair and accurate depiction?

3 A. Yes.

4 TC [MR. MILLER]: Move for the admission, Your Honor, of
5 478A, B, and C.

6 MJ [Col SPATH]: Noted. Thanks.

7 TC [MR. MILLER]: Provide the witness, please, with
8 Prosecution Exhibit 479.

9 Q. Do you recognize Prosecution Exhibit 479, sir?

10 A. Yes, sir, I do.

11 Q. What is 479?

12 A. It's an evidence bag containing a bag of keys.

13 Q. And did you collect those keys?

14 A. Yes, sir, I did.

15 Q. And how do you know that?

16 A. It's noted here on the evidence bag.

17 Q. Is that in your handwriting?

18 A. Yes, sir, it is.

19 Q. Could you read it, please.

20 A. The item description is "bag of keys." "Date
21 collected, 10/18/2000. Location of recovery, Room D, south
22 wall, kitchen drawer. Recovered by SA E. Cronin."

23 Q. Placing on the ELMO Prosecution Exhibit 479A. Do you

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1 recognize that, sir?

2 A. Yes, sir.

3 Q. What do you recognize that to be?

4 A. That's the bag containing the keys.

5 Q. Were the keys in that bag when you recovered them?

6 A. Yes, sir.

7 Q. Is there a K number on the exhibit, Prosecution

8 Exhibit 479A?

9 A. It appears that it's actually an X beside the 148.

10 Q. Okay. What is the number?

11 A. 148.

12 Q. All right. I'm placing on the ELM0 Prosecution

13 Exhibit 478 -- 479B, ask you if you recognize that, sir?

14 A. Yes, sir.

15 Q. And what is that?

16 A. The keys that were collected.

17 Q. Does it have a K number?

18 A. Yes, sir, K148.

19 Q. If you would, please, look at the actual Exhibit 479.

20 A. Yes, sir.

21 Q. Does it have a K number on it?

22 A. Yes, sir, K148.

23 Q. And does it match the K number in Prosecution

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1 Exhibit 479B?

2 A. Yes, sir, it does.

3 Q. Is there a 1B number contained on the exhibit,
4 Prosecution Exhibit 479?

5 A. Yes, sir, there is.

6 Q. All right. And what is that number?

7 A. 1B209.

8 Q. Is there a YM number?

9 A. Yes, sir.

10 Q. What is that?

11 A. YM2-177.

12 Q. Is there a chain of custody form attached to the
13 exhibit, Prosecution Exhibit 479?

14 A. Yes, there is.

15 Q. Would you take a look at that, please.

16 A. Yes.

17 Q. Does it have a 1B number?

18 A. Yes, sir, a 1B209.

19 Q. And does it have a YM number?

20 A. Yes, sir, YM2-177.

21 Q. Do those numbers match the numbers contained on the
22 exhibit, Prosecution 479?

23 A. Yes, sir, it does.

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1 Q. Placing on the ELM0 Prosecution Exhibit 479D. Do you
2 recognize that, sir?

3 A. Yes, sir, I do.

4 Q. And ----

5 A. It's a picture of the FD-192 in my hand.

6 Q. Is it an exact duplicate of the one that you just
7 described?

8 A. Yes, sir, it is.

9 Q. Placing on the ELM0 Prosecution Exhibit 479C for
10 Identification. Do you recognize that photograph, sir?

11 A. Yes, sir, I do.

12 Q. And what's contained in that photograph?

13 A. It's a picture of the evidence bag in my possession
14 here.

15 Q. Fair and accurate depiction of it?

16 A. Yes, sir, it is.

17 Q. And when you say the evidence bag in your hand,
18 that's the evidence bag in Prosecution Exhibit 479, correct?

19 A. Yes, sir, it is.

20 TC [MR. MILLER]: Move for the admission, Your Honor, of
21 Prosecution Exhibits 479A, B, C, and D.

22 MJ [Col SPATH]: Thank you. Noted.

23 TC [MR. MILLER]: If you'd hand the witness Prosecution

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1 Exhibit 481.

2 Q. Do you recognize Prosecution Exhibit 481?

3 A. Yes, sir, I do.

4 Q. Did you collect that item?

5 A. Yes, sir, I did.

6 Q. And what is that item?

7 A. It's a hydrogen peroxide bottle.

8 Q. And from where was it collected?

9 A. Room D in the south wall inside the residence,
10 medicine cabinet.

11 Q. And is there your handwriting contained on the
12 evidence bag?

13 A. Yes, sir, it is.

14 Q. All right. If you could read into the record.

15 A. Sure. The "item description, hydrogen peroxide
16 bottle. Date and time of recovery, October 18th, 2000.
17 Location of recovery, Room D, south wall, cabinet. Recovered
18 by SA E. Cronin."

19 Q. I'm going to place on the ELMO Prosecution
20 Exhibit 481A. Do you recognize that, sir?

21 A. Yes, sir, I do.

22 Q. And what is contained in that photograph?

23 A. A bottle of hydrogen peroxide.

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1 Q. Is it the same one contained in the Exhibit 481?

2 A. Yes.

3 Q. Is there a K number associated with the photograph?

4 A. Yes, sir, there is.

5 Q. What is that K number?

6 A. K154.

7 Q. Placing on the ELMO Prosecution Exhibit 481B. Do you
8 recognize that, sir?

9 A. Yes, sir, I do.

10 Q. And is that the other side of the bottle?

11 A. Yes.

12 Q. And in 481B, is there a K number?

13 A. Yes, sir, there is, the same K number, K154.

14 Q. And for the record, is that bottle contained in
15 Prosecution Exhibit 481?

16 A. Yes, sir, it is.

17 Q. If you could look at the bag, please.

18 A. Yes, sir.

19 Q. Does the bag itself have a K number?

20 A. Yes, sir, it does, K154.

21 Q. Does that match the K number in Prosecution
22 Exhibits 481A and 481B?

23 A. Yes, sir, it does.

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1 Q. Is there a YM number on the Exhibit 481?

2 A. Yes, sir, there is.

3 Q. What is it?

4 A. YM2-188.

5 Q. Is there a 1B number?

6 A. Yes, there is.

7 Q. And what is that number?

8 A. 1B220.

9 Q. Is there a chain of custody FD-192, green sheet,
10 attached to the exhibit?

11 A. Yes, sir, there is.

12 Q. All right. Take a look at it, please.

13 A. Yes, sir.

14 Q. Does it have a 1B number?

15 A. Yes, sir, 1B220.

16 Q. Does it have a YM number?

17 A. Yes, sir, YM2-188.

18 Q. All right. Does that match the numbers contained on
19 the exhibit, Prosecution Exhibit 481?

20 A. Yes, sir, they do.

21 Q. Placing on the ELM0 Prosecution Exhibit 481D. Do you
22 recognize that, sir?

23 A. Yes, sir. It's a picture of the FD-192 in my hand.

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1 Q. Is it an exact duplicate?

2 A. Yes, sir, it is.

3 Q. Lastly, I'm placing on the -- at least for this
4 exhibit I'm placing on the elbow -- on the ELM0 Prosecution
5 Exhibit 481C, as in Charlie. Do you recognize that
6 photograph, sir?

7 A. Yes, sir. It's a photo of the evidence bag in my
8 possession here.

9 Q. And the evidence bag in your possession is
10 Prosecution Exhibit 481, correct?

11 A. Yes, sir.

12 Q. Fair and accurate depiction of that evidence?

13 A. Yes, sir, it is.

14 TC [MR. MILLER]: Your Honor, the government would move
15 for the admission of Prosecution Exhibit 481A, B, C, and D.

16 MJ [Col SPATH]: Noted. Thank you.

17 TC [MR. MILLER]: Provide the witness, please, with
18 Prosecution Exhibit 482.

19 Q. Do you have 482 in front of you, Agent?

20 A. Yes, sir, I do.

21 Q. Do you recognize it?

22 A. Yes, sir.

23 Q. Did you seize it?

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1 A. Yes.

2 Q. And did you seize it at Site Number 2?

3 A. Yes, sir, I did.

4 Q. And did you enter your -- the information on the
5 evidence bag?

6 A. Yes, I did.

7 Q. It's your handwriting?

8 A. Yes, sir.

9 Q. If you could, please, read into the record what you
10 noted on the evidence bag.

11 A. "Date and time of recovery, October 18th, 2000.
12 Recovered by SA E. Cronin. Description and/or location,
13 Whitecat Detergent, Room D, east wall."

14 Q. And all of these rooms were numbers that were
15 associated -- were assigned by whom?

16 A. The evidence team leader, sir.

17 Q. Placing on the ELMO Prosecution Exhibit 482A. Do you
18 recognize that, sir?

19 A. Yes, sir.

20 Q. And what do you recognize it to be?

21 A. It's the bag of detergent in the evidence bag in my
22 possession.

23 Q. And the evidence bag in your possession is

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1 Prosecution Exhibit 482, correct?

2 A. Yes, sir, it is.

3 Q. Does the photograph, Prosecution 482A, have a K
4 number?

5 A. Yes, sir, it does.

6 Q. And what is it?

7 A. K155.

8 Q. If you would, please, look at the actual exhibit,
9 Prosecution Exhibit 482.

10 A. Yes, sir.

11 Q. All right. If you could, does it have a 1B number?

12 A. It has -- yeah, 1B22 -- yes, sir, 1B221.

13 Q. Does it have a YM number?

14 A. Yes, it does.

15 Q. What is that?

16 A. YM2-189.

17 Q. And does it have a K number?

18 A. Yes, sir, K155.

19 Q. Does the K number on the bag match the K number in
20 Prosecution Exhibit 482A?

21 A. Yes, sir, it does.

22 Q. Is there a green sheet, an FD-192, attached to the
23 Exhibit 482?

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1 A. Yes, sir, there is.

2 Q. If you look at that, please.

3 A. Yes, sir.

4 Q. Does it have a YM number, the green sheet?

5 A. Yes, sir, YM2-189.

6 Q. Does that match the YM2 number on the Exhibit 482?

7 A. Yes, sir, it does.

8 Q. Placed on the ELMO Prosecution Exhibit 482C, sir. Do
9 you recognize that?

10 A. Yes, sir. It's a picture of the FD-192 in my hand.

11 Q. Is it an exact duplicate of it?

12 A. Yes, sir, it is.

13 Q. Placing on the ELMO Prosecution Exhibit 482B, sir.
14 Do you recognize that?

15 A. Yes, sir. It's a picture of the evidence bag in my
16 possession.

17 Q. And the evidence bag in your possession is
18 Prosecution Exhibit 482, correct?

19 A. Yes, sir.

20 Q. Fair and accurate depiction of it?

21 A. Yes, it is.

22 TC [MR. MILLER]: Government would move for the admission,
23 Your Honor, of Prosecution Exhibit 482A, B, and C.

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1 MJ [Col SPATH]: Noted. Thank you.

2 TC [MR. MILLER]: Placing -- if you could place before the
3 witness Prosecution Exhibit 489.

4 Q. Do you recognize that, sir?

5 A. Yes, sir, I do.

6 Q. And did you seize that particular item?

7 A. Yes, I did.

8 Q. And did you mark it into evidence?

9 A. Yes, I did.

10 Q. Do you have the evidence bag in front of you?

11 A. Yes, sir.

12 Q. And is it in your handwriting?

13 A. Yes, it is.

14 Q. All right. If you could, please, read into the
15 record, the item description, date and time, location and
16 recovered by.

17 A. The item description is a "broom, green handle. Date
18 of -- date and time of recovery, October 18th, 2000. Location
19 of recovery, front porch, Room A."

20 Q. And recovered by?

21 A. "SA E. Cronin."

22 Q. And that's in your handwriting?

23 A. Yes, sir, it is.

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1 Q. Placing on the ELM0 Prosecution Exhibit 489A. Do you
2 recognize that, sir?

3 A. Yes, sir. That's the green broom in the evidence bag
4 in my possession.

5 Q. And that's the evidence bag, 489, correct?

6 A. Yes, sir.

7 Q. Looking at the evidence bag itself, does it have a Y2
8 number on it -- a YM2 number on it?

9 A. Yes, sir.

10 Q. What is that number?

11 A. YM2-123.

12 Q. Does it have a 1B number?

13 A. Yes, sir, 1B156.

14 Q. Is there a green sheet, a 192 form, attached to the
15 exhibit?

16 A. Yes, sir, there is.

17 Q. Take a look at it, please.

18 A. Yes, sir.

19 Q. Does it have a YM2 number on it?

20 A. Yes, sir.

21 Q. What is it?

22 A. YM2-123.

23 Q. Does it have a 1B number?

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1 A. Yes, sir.

2 Q. What is that?

3 A. 1B156.

4 Q. Does that match the numbers contained on the actual
5 Exhibit 489?

6 A. Yes, sir, it does.

7 Q. Placing on the ELM0 Prosecution Exhibit 489C. Do you
8 recognize that, sir?

9 A. Yes, sir. It's the picture of the FD-192 in my
10 possession.

11 Q. Is it an exact duplicate of it?

12 A. The FD-192 in my possession has one more "Accepted
13 for."

14 Q. All right. Let me ask you this, as to the first ----

15 A. Actually two.

16 Q. As to the first four entries on 489C, are those
17 four -- first four entries exact duplicates of the FD-192 that
18 you have in your possession, up to Kelly Baribeau?

19 A. Yes, sir, they are -- it is.

20 Q. Placing on the ELM0 Prosecution Exhibit 489B, as in
21 boy. Do you recognize that, Agent?

22 A. Yes, sir, it's a picture of the evidence bag in my
23 possession here as item 489.

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1 Q. All right. Fair and accurate depiction of it?

2 A. Yes, sir, it is.

3 TC [MR. MILLER]: Move for the admission, Your Honor, of
4 Prosecution 489A, B, and C.

5 MJ [Col SPATH]: Noted. Thank you.

6 TC [MR. MILLER]: If you would place before the witness,
7 please, Prosecution Exhibit 494.

8 Q. Do you recognize that, sir?

9 A. Yes, sir, I do.

10 Q. And what is 494?

11 A. It's a collection of hair taken from the residence
12 that day.

13 Q. Did you collect it?

14 A. Yes, sir.

15 Q. And from where did you collect it?

16 A. Kitchen -- kitchen sink in -- the sink in Room F.

17 Q. All right. And did you -- what did you collect it
18 in?

19 A. A small metal can.

20 Q. And did you actually put the hair into the can?

21 A. Yes, sir.

22 Q. And did you mark the can?

23 A. Yes, sir, I did.

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1 Q. Placing on the ELM0 Prosecution Exhibit 494A. What's
2 contained in that photograph, sir?

3 A. It's a picture of the can in my possession for item
4 494.

5 Q. All right. And the writing in black, is that your
6 handwriting?

7 A. Yes, sir.

8 Q. All right. If you could, without giving us the case
9 number, but all the other information, could you read it into
10 the record, please?

11 A. "Date collected, October 18th, 2000, SA Ed Cronin.
12 Hair samples from sink, Room F, west wall."

13 Q. And that is in your handwriting?

14 A. Yes, sir, it is.

15 Q. Is there a K number contained in the photograph,
16 Prosecution Exhibit 494A?

17 A. Yes, sir, there is.

18 Q. And what is that?

19 A. K216.

20 Q. All right. And is there a YM number on it? If you
21 can see.

22 A. Yes, sir, YM2-154.

23 Q. All right. Now looking at the actual exhibit itself,

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1 Prosecution Exhibit 494, again, does the K -- K number in the
2 actual exhibit match the K number in Prosecution Exhibit 494A?

3 A. Yes, sir, it does, K216.

4 Q. All right. Again, I think you indicated that it has
5 a YM number. What is that YM number again, please?

6 A. YM number on the metal can is YM2-154.

7 Q. All right. Is there a green sheet attached to that
8 particular exhibit?

9 A. Yes, sir.

10 Q. All right. If you would look at that, please.

11 A. Yes, sir.

12 Q. Does it have a YM number associated with it?

13 A. Yes, sir, YM2-154.

14 Q. And does that match the YM2 number contained on the
15 actual exhibit, Prosecution Exhibit 494?

16 A. Yes, it does.

17 Q. I'm placing on the ELM0 Prosecution Exhibit 494C. Do
18 you recognize that, sir?

19 A. Yes, sir, I do.

20 Q. What do you recognize it to be?

21 A. It's a picture of the FD-192 in my possession for
22 item 494.

23 Q. Is it an exact -- at least the first four signatures,

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1 an exact duplicate of the FD-192 in your possession?

2 A. Yes, sir, it's exact.

3 Q. Lastly, I'm placing on the ELMO Prosecution
4 Exhibit 494B for Identification. Do you recognize that, sir?

5 A. Yes, sir, I do.

6 Q. What do you recognize it to be?

7 A. It's a picture of the metal can in my possession as
8 item 494 with the collection of hair samples.

9 Q. Fair and accurate depiction of it?

10 A. Yes, sir.

11 TC [MR. MILLER]: Your Honor, the government would move
12 for the admission of Prosecution Exhibits 494A, B, and C.

13 MJ [Col SPATH]: Noted. Thank you.

14 TC [MR. MILLER]: If we could place before the witness
15 Prosecution Exhibit 498, 499, and 500.

16 Q. Do you have before you Prosecution Exhibit 498, 499,
17 and 500?

18 A. Yes, sir, I do.

19 Q. And are those exhibits grouped together in one
20 evidence bag?

21 A. Yes, sir, they are.

22 Q. Did you collect them at the same time?

23 A. Yes, sir, I did.

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1 Q. And what are the items that you collected -- first
2 off, did you collect them?

3 A. Yes.

4 Q. And what was it that you collected?

5 A. Two toothbrushes and one comb.

6 Q. How do you know that you collected them?

7 A. In the evidence bag in front of me, for these three
8 items, it's noted in my handwriting for the date, the location
9 of the recovery, and the recovered by.

10 Q. All right. If you could, read that into the record.

11 A. "Date and time of recovery, October 18th, 2000.
12 Location of recovery, Room G, north wall. SA E. Cronin, and
13 W. Davitch."

14 Q. And I think you indicated W. Davitch was whom?

15 A. SA William Davitch.

16 Q. Placing on the ELMO Prosecution Exhibit 498A. Do you
17 recognize that, sir?

18 A. Yes, sir, I do.

19 Q. What is contained in that photograph?

20 A. The picture of the two toothbrushes and one comb in
21 my possession for item 498, '99, and 500.

22 Q. All right. So these are the three separate items,
23 correct?

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1 A. Yes, sir.

2 Q. Does it have a K number attached to it?

3 A. Yes, sir. The K number in the picture is K222.

4 Q. Looking at the actual exhibit -- the actual exhibit,
5 the bag you have in front of you, you indicated it has your
6 handwriting on it, correct?

7 A. Yes, sir.

8 Q. Does it have a K number on it?

9 A. Yes, sir.

10 Q. And what is that K number?

11 A. K222.

12 Q. Does that match the K number contained in Prosecution
13 Exhibit 498A?

14 A. Yes, sir, it does.

15 Q. Is there a Y2 number contained on the evidence bag?

16 A. Yes, sir, YM2-173.

17 Q. And again, this is the evidence bag that contained
18 all three of the items; is that correct?

19 A. Yes, sir, it does.

20 Q. Give me a second here. I'm placing on the ELM0
21 Prosecution Exhibit -- oh, excuse me.

22 Is there a chain of custody form attached to your
23 evidence bag?

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1 A. Yes, sir, there is.

2 Q. Is there one or is there more than one?

3 A. There is one.

4 Q. All right. And does it have a YM number?

5 A. Yes, sir, it does.

6 Q. And what is that number?

7 A. YM2-173.

8 Q. All right. I'm placing on the ELMO Prosecution

9 Exhibit 498C. Do you recognize that?

10 A. Yes, sir. It's a picture of the FD-192 in my hand.

11 Q. And does that have the same number contained in the
12 exhibit of the evidence bag, 498?

13 A. Yes, sir.

14 Q. All right. I'm placing on the ELMO Prosecution
15 Exhibit 498B. I think I may have asked you this. Do you
16 recognize that photograph?

17 A. Yes, sir.

18 Q. And is that the bag that contained all three separate
19 exhibits?

20 A. Yes, sir, it is.

21 Q. All right. Is it a fair and accurate depiction of
22 the evidence bag 498, 499, and 500?

23 A. Yes, sir, it is.

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1 TC [MR. MILLER]: Your Honor, the government would move
2 for the admission of Prosecution Exhibit 498A, B, and C.

3 MJ [Col SPATH]: Thank you. Noted.

4 TC [MR. MILLER]: The government has no further questions
5 of this witness.

6 MJ [Col SPATH]: Okay. Hold on. Let me just check with
7 the defense.

8 Defense Counsel?

9 DDC [LT PIETTE]: Defense takes no position.

10 MJ [Col SPATH]: All right. Let me -- we've seen each
11 other before. I'm going to just remind you of the order I
12 gave you before. Don't discuss your testimony until this
13 matter is resolved. As you can tell, it's going to take a
14 while. As I said last time, I anticipate that is still the
15 same.

16 Additionally, as I said before, thank you for coming
17 down and testifying in person. I know it means a lot to the
18 people involved in this when people take the time to do that.
19 It's appreciated. You're excused.

20 WIT: Thank you, Your Honor.

21 [The witness was warned, excused, and withdrew from the
22 courtroom.]

23 MJ [Col SPATH]: Mr. Miller, before we get out of here

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1 tonight, let me ask: What's tomorrow look like for witnesses?

2 TC [MR. MILLER]: Tomorrow we anticipate two VTC witnesses
3 who will be rather short. When I say short, 20 minutes
4 apiece. Then we have two other witnesses. I'd say we
5 probably have four and a half hours, five hours of testimony
6 tomorrow, Your Honor.

7 MJ [Col SPATH]: Total?

8 TC [MR. MILLER]: Total. The longest one will be Special
9 Agent LoCascio, and the next longest will be Kneisler. So
10 that's why I say, probably, yeah, I think that's a good
11 estimate.

12 MJ [Col SPATH]: And the VTC witnesses, you anticipate
13 both of them are reasonably short?

14 TC [MR. MILLER]: Reasonably short, Your Honor, yes. One
15 has one exhibit. The other one it was one exhibit and was the
16 chain of custody on several others. That's about it.

17 And we have -- we'll probably finish up with the
18 remaining witnesses on Thursday. If we're going all day,
19 we'll have them done in the morning.

20 MJ [Col SPATH]: Okay. Then we'll see ----

21 TC [MR. MILLER]: If any spillover from Wednesday, we can
22 certainly clean it up by Thursday.

23 MJ [Col SPATH]: All right. So for the VTC witnesses,

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1 let's take them in the morning.

2 TC [MR. MILLER]: We will.

3 MJ [Col SPATH]: Let's plan -- given the timeline, let's
4 plan on a 10:00 start. We'll get through those. If we get
5 through them early we'll start with the third witness. If we
6 don't get through before lunch -- we'll get through the two of
7 them before lunch. Then we'll break, get everyone ready to
8 come in here live in the afternoon, we'll get through those
9 two longer witnesses.

10 TC [MR. MILLER]: We will.

11 MJ [Col SPATH]: That works. Okay. I don't know who
12 wants to talk about the civilians. I think, Colonel Wells,
13 you've been chatting about them, so probably you.

14 I don't know what I am doing yet, but let me just
15 make sure. They were served with a subpoena, yes?

16 MATC [COL WELLS]: Yes, sir.

17 MJ [Col SPATH]: The subpoena was issued in accordance
18 with the Manual for the Commissions?

19 MATC [COL WELLS]: Yes, sir.

20 MJ [Col SPATH]: Particularly Rule 703?

21 MATC [COL WELLS]: Yes, sir.

22 MJ [Col SPATH]: Fees and mileage tendered to the witness?

23 MATC [COL WELLS]: Tendered, correct, sir.

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1 MJ [Col SPATH]: Regarding materiality, that's for me,
2 frankly. I've said they've not been excused. And in order
3 for me to determine if good cause exists, I have to hear from
4 them, because they've provided little. What I have is a
5 statement from Yaroshefsky addressed to Mr. Kammen; doesn't
6 even talk about them.

7 I have a statement from General Baker, pretty minimal
8 in facts, as to why he excused three counsel. And frankly, if
9 General Baker is to be believed, you could excuse the defense
10 counsel who's sitting here by his same analysis, and he's
11 still sitting here, which tends to undermine that. So of
12 course they're material.

13 So I can understand, is Lieutenant Piette different
14 somehow? Or we've just left him here? Making it much more
15 strategic and much more visible that we've under-resourced the
16 defense team. So of course they're material. So it looks to
17 me like so far we've complied.

18 The witness clearly refused, through counsel, because
19 I saw the e-mail. And the Attorney Fox said they're not
20 showing. And I assume he can speak for them since he's their
21 attorney. And so I can't see a valid excuse. Again, the
22 e-mail that I was shown said I lack jurisdiction; I don't.
23 And that the -- having to appear at the Mark Center by VTC for

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1 DoD civilians employed in D.C. would be oppressive, with no
2 evidence to the contrary.

3 So what I would like is some homework overnight.
4 Would you at least craft the two writs. Because I'm going to
5 issue warrants of attachment -- I plan to do it tomorrow -- to
6 have them brought sometime on Thursday or Friday.

7 Also -- again, I don't know yet. I really do mean
8 I'm going to pause overnight to take some time to work through
9 the different options and to make sure that I am proceeding in
10 a manner that is judicious and fair, and not based on any
11 frustration, because sometimes it is easy to feel some
12 frustration, and I find it's best to take a pause.

13 But inquire into Mr. Koffsky's availability this
14 week. We've discussed it with him. We've given some warning
15 to him. For him -- if you all can work it out that there's
16 VTC capability in the Pentagon that satisfies the crowd here,
17 he doesn't even have to go to the Mark Center. And I'm pretty
18 confident there is. But what we need are: What are his
19 windows of availability? Or do we also need to also subpoena
20 him? In which case we'll go through the process.

21 But first I need to know is -- I know he wants
22 interrogatories. I know he wants us to send the questions.
23 That's not going to happen. I want to know what he's doing to

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1 assist in getting these witnesses here; what he's doing to
2 assist in resourcing this team; does he know what's going on;
3 what does he believe his role is; and what's he doing about
4 the clear evidence of misconduct in all of these cases?
5 That's -- I mean, I think we all know what I want to talk to
6 him about. It should be easy, frankly, for -- if he's
7 engaging with legal counsel, for them to help him in the areas
8 that I have questions about.

9 And as always, I take privilege seriously. If he's
10 concerned about privilege, just tell me in answer to -- just
11 pause before you answer the question and we'll work through
12 it. I'm not ordering him to appear yet. What I want to know
13 is if I order his appearance, is he available any time
14 tomorrow or Thursday or Friday, or are we going to have to go
15 down this road of subpoenas?

16 So if you could give me some updates on that
17 tomorrow, and again, if you guys could draft like you did last
18 time we went through this, I would sure appreciate drafts for
19 the warrants so we can issue the writs.

20 MATC [COL WELLS]: One moment, sir.

21 MJ [Col SPATH]: Please.

22 [Pause.]

23 MATC [COL WELLS]: All right, sir. I just conferred with

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1 co-counsel to make sure that I understood your intent and your
2 directions. And we also discussed to make sure that we filed
3 with the court and with the defense the necessary paperwork
4 that supports the questioning you just had of me of whether or
5 not the warrant was properly issued and all other instructions
6 and fees were tendered. We understand that, sir, and we will
7 move forward.

8 MJ [Col SPATH]: All right. The other -- because I'm
9 certainly not communicating with any of these people. I want
10 to make sure that we have communicated clearly to their
11 attorneys and them, I denied their motion to quash. I said it
12 in here. I heard myself say it. I double checked. I was
13 pretty clear.

14 But separate from that I issued a scheduling order
15 telling them to be here after we had gone through one round of
16 briefing, which reasonably you can read that I denied their
17 motion to quash. But then I remember on Monday -- I didn't
18 remember. I read the record again. I know I said on Monday.
19 It's denied, and I rejected the second set of filings ----

20 MATC [COL WELLS]: Yes, sir.

21 MJ [Col SPATH]: ---- because I've already given them a
22 briefing cycle. So did you communicate that clearly to their
23 attorney? And I hope you did, and do it again.

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1 MATC [COL WELLS]: Sir, hold on just a moment, please.

2 [Pause.]

3 MATC [COL WELLS]: Your Honor, may I approach the clerk,
4 please?

5 MJ [Col SPATH]: You may, please.

6 [Pause.]

7 MATC [COL WELLS]: Your Honor, what I've done here while
8 the clerk is marking this, this is an e-mail that's been
9 communicated to your clerk. It was one that I initiated based
10 on the information I understood and communications reported to
11 me from my office, the chief prosecutor's office, about the
12 attorneys for Ms. Eliades and Ms. Spears.

13 And in that I did communicate that -- your decision
14 to deny the motions to quash, in addition, also, the stay that
15 they seemed to ask, some indication that they thought if
16 they've got a ruling from you, this commission, that they
17 might take collateral or appellate action. I don't know when
18 that would occur. I'm not sure there's a timeline on that.
19 They did not specify. So they wanted some formality. I gave
20 that to them. They responded. They acknowledged. And so I
21 would like that made and appended to the record.

22 MJ [Col SPATH]: And it's 389XX. Thank you. All right.
23 They seem to have gotten it. I see the top e-mail has the

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1 clear direction from Mr. Potter.

2 You're very kind in your e-mail. "I understand...I
3 believe Judge Spath indicated from the bench...he would NOT
4 quash..." I've ruled on it, I'm not quashing the subpoenas,
5 because I didn't get anything. What I got is a rehash of
6 every argument I got before and I rejected the filings. We
7 went through a briefing cycle with their first set of filings,
8 because I was interested.

9 And I gave -- I heard from their attorney and the
10 third party. One would hope the scheduling order after that
11 briefing cycle rejecting their filings and me saying on the
12 record "I'm denying your motion to quash" would be enough for
13 any attorney to recognize it. So please communicate this to
14 Mr. Fox tonight. If I was going -- I'm not giving advice.
15 But if I were to be going to federal court, I would go soon.

16 MATC [COL WELLS]: Yes, sir.

17 MJ [Col SPATH]: That's what I would do, if I was hoping
18 to get some kind of stay. And I would reference what occurred
19 with another witness in New York recently. Go to another
20 district, might get another answer, right? But there are some
21 things I would communicate to Mr. Fox. I'll leave that to
22 you.

23 If you all would draft the needed documents, I will

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1 try to let you know as soon as I can what the road is. But I
2 want my options available so when we get here tomorrow we have
3 time to assist them in getting to the commissions to tell me
4 what their good cause is. Okay.

5 MATC [COL WELLS]: Yes, sir.

6 MJ [Col SPATH]: Thanks. Anything else tonight before we
7 recess from the prosecution?

8 TC [MR. MILLER]: Nothing further from the government.
9 Thank you, Your Honor.

10 MJ [Col SPATH]: Defense Counsel?

11 DDC [LT PIETTE]: Nothing from defense, Your Honor.

12 MJ [Col SPATH]: We'll see you at 10:00 tomorrow. We're
13 in recess.

14 [The R.M.C. 803 session recessed at 1724, 13 February 2018.]

15 [END OF PAGE]

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